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HEARINGS

Before The

SUBCOMMITTEE ON AIR AND WATER POLLUTION

COMMITTEE ON PUBLIC WORKS

UNITED STATES SENATE

AIR AND WATER POLLUTION

EXECUTIVE SESSION

Washington, D. C.

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EXECUTIVE SESSION

AIR AND WATER POLLUTION

SEPTEMBER 16, 1971

United States Senate,

Subcommittee on Air and Water
Pollution of the Committee on
Public Works,

Washington, D. C.

The Subcommittee met, pursuant to recess, at 10:00 a.m.,
in Room 4110, New Senate Office Building, Honorable Edmund S.
Muskie (Chairman of the Subcommittee) presiding.

Present: Senators Muskie, Boggs, Eagleton, Cooper,
Buckley, Baker and Jordan.

Senator Muskie. Shall we begin, gentlemen. I think we
might formally consider your report here, Senator Baker. Why
don't you restate what happened at the meeting of the Commerce
Committee, and then see if we can act on it.

Senator Baker. Mr. Chairman, this morning there was a
meeting of the Executive Session of the full Commerce Committee.

Since I am the only member of this Committee on the
Commerce Committee, I attended, and I found that we were faced

1 Senator Muskie. But they did not respond on that
2 point.

3 Senator Jordan. Mr. Chairman, may I make a suggestion
4 to that point? I am talking about the Committee printed 55 per-
5 cent Federal grant and state matching. Could that be state or
6 municipality, either one?

7 Mr. Billings. Under the existing law and the way the
8 Administration has interpreted the 1966 Act as a practical mat-
9 ter, it can be, if the state loans the municipality 25 percent.
10 Then the Federal share goes from 30 to 55 percent, which means
11 essentially the local government is coming up with 45 and the
12 Federal is putting up 50.

13 The '66 Act intended that the state's share of 25 per-
14 cent be a grant, not a loan. This is where the conflict with
15 the Administration came in.

16 Senator Muskie. What concerns me about the present
17 law, given that interpretation, is that the states, which are
18 now providing grant money, will gradually phase out of that if
19 they understand that all they have to put up is loan money.

20 I think it is desirable to have the states continue
21 their grant programs and for other states to begin grant pro-
22 grams if possible.

23 My answer to that was to increase the Federal grant up
24 to 60 percent flat, without any condition of state participa-
25 tion, then provide another incentive to bring to the states that

cc-3 1 now have grant programs to continue them, and for others to come
2 in.

3 Now, that is an answer. It is a rough and ready an-
4 swer, but it is an answer. I say that if we take the Adminis-
5 tration's position, eventually we are going to lose a lot of
6 those state grant programs.

7 Senator Jordan. Don't some states not have any grants?

8 Senator Muskie. That is right, which penalizes the
9 locality.

10 Senator Jordan. If a county or a city could come up
11 with their money though, why wouldn't that be sufficient, if we
12 could?

13 Senator Muskie. That is what, in effect, we have done
14 in Committee print, increasing the state grant up 60 percent
15 flat.

16 Senator Eagleton. Federal.

17 Senator Muskie. Which means that the localities have
18 to provide ---

19 Senator Jordan. Localities have to provide the rest
20 of it.

21 Senator Muskie. But we say that above that, if the
22 states will provide up to 15 percent, the Federal government
23 will provide -- will match it percentage point for percentage
24 point, above the 60 percent.

25 Senator Jordan. That is all good, I think.

cc-4

1 Senator Muskie. I think it is.

2 Senator Jordan. It might be best to hold it to 55
3 percent, if the Administration is adamant against it.

4 Senator Muskie. It is not a formal Administration
5 position up to this point. All that we have got are informal
6 Agency comments, you see. The Administration prefers to keep
7 it that way, flexible, until the Committee has considered this.

8 I think that we have voted on this issue before in
9 Sub-committee before, on this choice before. I am sure that
10 the result is likely to be the same. In any case, that is the
11 issue.

12 Senator Beall. Mr. Chairman, there is a slightly
13 different phase. As you pointed out to me, there is a possi-
14 bility, since we have expanded the Act so greatly with regard
15 to the purposes for which grants can be made and since there
16 has been a reluctance on the part of the Congress to fully fund
17 the previous Act, that what we might be doing by increasing the
18 Federal share to 75 percent is just increasing the amount of
19 money the states won't get.

20 This causes some concern, particularly if you allo-
21 cate on the basis purely of population. There is increasing
22 concern because with allocation on that basis it tends to re-
23 duce the amount many states will receive.

24 There could be less money under 75 percent than they
25 are getting now under 55.

cc-5

1 Senator Muskie. Well, I think that the Committee
2 print meets that argument, shifting from appropriations to
3 contracts. It isn't likely that anyone will renege on the
4 contract obligations.

5 If this legislation passes ---

6 Senator Beall. There is a firm commitment on the
7 part of the Federal government to come up with the money?

8 Mr. Billings. That is automatic with the Act, un-
9 less the Appropriations Committee negatively acts. Before the
10 Appropriations Committee positively acts, they would have to
11 negatively veto ---

12 Senator Beall. They would have to reduce the amount
13 of money by enactment of appropriate legislation, specifically
14 reducing the amount.

15 Mr. Meyers. What they may do, say, for the next fis-
16 cal year -- You may only obligate X amount, which might be less
17 than the authorized figure.

18 Senator Beall. What is the likelihood of their doing
19 that?

20 Mr. Meyers. They have done that on other programs.

21 Senator Eagleton. What are some other programs?

22 Mr. Meyers. The Urban Mass Transit Program.

23 Senator Beall. That was just started two years ago.

24 Mr. Meyers. We have seen it with the Beautification
25 Program and the Safety Program both.

cc-6

1 Senator Beall. Some states got on the hook as a re-
2 sult of the Highway Beautification Program.

3 Mr. Meyers. That is right.

4 Senator Muskie. Well, we succeeded -- In order to
5 succeed in having Congress assume responsibilities for legis-
6 lative Acts which have been opposed, first, we must press
7 aggressively for expansion of the Federal responsibility, which
8 we haven't done so well.

9 Secondly, we have said that we must have the enthu-
10 siastic and dedicated support of the Appropriations Committee
11 as a close ally.

12 If the answer to this argument is: "Well, let us
13 just retreat and go slowly," then we are never going to get
14 anywhere.

15 Senator Beall. Well, I am not arguing with the Com-
16 mittee's position. I think the Committee has gone as affirma-
17 tively as it can under the circumstances.

18 I do think, however, that the states may have some
19 legitimacy from their point of view that, if they are going to
20 run the risk of just dividing a not much bigger pie many more
21 ways, they would just as soon stick to the 55 percent.

22 At least they would know where they are and where
23 they are going to be.

24 Senator Muskie. Is this a strong point of view?

25 Mr. Billings. On Senator Beall's point, I think it

cc-7 1 is pertinent to note that the Administration was talking about
2 12.6 billion dollars total program to implement the secondary
3 treatment program. At 75 percent, that would be \$9 billion in
4 the next three years.

5 This is what this bill provides: \$2 billion, \$3 bil-
6 lion, \$4 billion through fiscal 1974. If the Committee decides
7 to define treatment work to include the cost of providing sewer
8 overflow, separation and sanitary sewers, the Committee may wish
9 to delay the application of funds to those programs until beyond
10 1974, so that the \$9 billion or the great majority of that can
11 go to the existing estimated backlog.

12 That, I think, would resolve the problem that Senator
13 Beall raises, which is that those other things would cost a lot
14 more money.

15 Senator Beall. The point was made, wasn't it, by
16 someone that in New York State alone it would cost \$80 billion,
17 if the definition were made broad enough?

18 Mr. Billings. Yes.

19 Senator Beall. That is a little further. That is
20 much broader.

21 Senator Muskie. Let us get on to the next item. What
22 form has that issue taken?

23 Mr. Billings. Mr. Chairman, Industrial User Charges
24 raises three questions. Jim, back me up on this because I may
25 not list them all.

cc-8

1 The first question is whether or not the industrial
2 user should be required to repay the local cost of construction
3 plus interest.

4 The second question is whether the industrial user
5 should be required to repay that portion of Federal grant attri-
6 butable to treatment of the industrial user's waste.

7 The third question is: If the latter decision is
8 made, should that Federal share come back into the Federal
9 Treasury?

10 A tangential issue is whether or not -- is how the
11 industrial user should be defined. The staff at this point
12 generally believes that the law should carry or the statute
13 should carry a definition of "industrial user".

14 The Sub-committee voted that the industrial user's
15 share of the Federal share should be recovered and should go
16 to the Treasury. That also includes language which would have
17 the industrial user repay the local construction costs.

18 I am in Section 204, Paragraph 6, page 25 and page 27,
19 Paragraph 3.

20 Senator Muskie. Are you saying that the Agency posi-
21 tion is that the industrial user should not pay construction
22 costs, if the industrial portion of the local ---

23 Mr. Billings. No, Mr. Chairman. Let me correct that.

24 Senator Muskie. What issues are raised by the Agency?

25 Mr. Billings. The Agency raises the question of how

cc-9

1 that portion of the Federal share attributable to industry is
2 treated. The informal Agency views are that industrial share
3 should stay in the local community rather than return to the
4 Treasury.

5 The issue of how local construction costs are treated:
6 They are raised by the local communities and they believe that
7 they should be allowed to make the decision on that. There are
8 two separate views on the issue.

9 I should add too that the Administrator has indicated
10 personally that he feels that the recovery provision, the recovery
11 of the local share, should be left to the local community,
12 whether it wants to recover it and is capable of recovering or
13 whether it wants to use it as an economic development scheme in
14 the community as part of the incentive to industry and the
15 choice be left to the local community, whether they want to
16 recover capital costs from the industries located in this community.
17

18 Senator Muskie. That is as to the local share of the
19 cost.

20 Mr. Jorling. That is correct.

21 Senator Muskie. Of course, that question would vary
22 as the local share varies. Would that same judgment apply as
23 to the state share and local share?

24 Mr. Jorling. Yes, I think. If I interpret it correctly,
25 he would basically have the Federal statute remain

cc-10 1 silent with respect to the local share and the relationship of
2 industrial users in the facility.

3 Senator Muskie. All right. There are two questions
4 involved. That one, which didn't arise, and the other one about
5 where recovery of the Federal share of the cost of the indus-
6 trial capacity should be.

7 Mr. Joxling. Also, the question has been raised about
8 the recovery of the Federal share from industry. There have
9 been some examples presented to the Committee that the provision
10 as written in the Committee bill could have the effect of dis-
11 couraging industrial use of municipal facilities.

12 That cuts against the other policy, stated throughout
13 the Act, that we should encourage industrial use in municipal
14 facilities.

15 The example was given most emphatically, not only to
16 the Committee staff, but also to the Administration -- There was
17 an example in St. Louis where the operation of the language in
18 the Committee print would result in the withdrawal of Anheuser-
19 Busch from participating in the St. Louis system.

20 That would withdraw from the revenues presently de-
21 rived in St. Louis, something on the order of \$300,000 per year.
22 I am not sure of the figure. I understand that if it were
23 raised about \$50,000, Anheuser-Busch would reconsider.

24 Senator Muskie. Are you saying that Anheuser-Busch,
25 in terms of the cost of the initial capacity by the local

cc-11 f community ---

2 Mr. Jorling. I don't ---

3 Senator Muskie. Even as to the Federal share?

4 Mr. Jorling. Yes.

5 Mr. Billings. The economics are such that if Anheuser-
6 Busch has to put up more than \$50,000 additionally to get to
7 stay in the system, it will pull out and build its own treatment
8 facility.

9 It won't be pulling out just \$50,000. It will be
10 pulling out what it is presently paying for the existing treat-
11 ment. They are paying some \$200,000 into this system now for
12 treatment. \$50,000 more would put them over the margin at which
13 they could treat themselves.

14 Senator Muskie. Does that \$200,000 represent ---

15 Mr. Billings. That represents the payment they are
16 making for the existing primary treatment.

17 Senator Muskie. Operation? Maintenance? The cost of
18 construction?

19 Mr. Billings. It is not the Federal share.

20 Senator Jordan. Mr. Chairman ---

21 Senator Muskie. I mean, if there is no Federal share
22 there, then how does this create any problems? What we are talk-
23 ing about is recovery of the Federal share. How does this affect
24 Anheuser-Busch?

25 Mr. Jorling. As I understand the way -- Presently

cc-12 1 going from a primary treatment, which is the basis for their
2 present cost, to a secondary system, which would be funded under
3 this provision.

4 This initial calculation reveals that that would re-
5 quire them to make this additional payment because of the recov-
6 ery provision, the recovery of capital cost attributable to
7 Federal share would put them into a calculus where they would
8 say: "We will build our own facility."

9 Senator Muskie. What they are saying is that, so far
10 as they are concerned, industry is involved only if they get a
11 Federal subsidy for the cost of construction?

12 Mr. Billings. They are saying that it would not be
13 economic to participate in an unsubsidized system. It would not
14 be economic for them.

15 Senator Muskie. I am not asking what their words are.
16 I am asking what the effect of their words are. They are saying
17 that they would not want to participate unless the Federal gov-
18 ernment contributes the capital cost of building the capacity?

19 Mr. Billings. In this particular instance, the econo-
20 mics apparently work out that way.

21 Senator Muskie. If it is cheaper for them to do it
22 themselves, then maybe we ought to require them. Why should it
23 be cheaper for Anheuser-Busch to do it themselves and not for
24 other industries to do it themselves?

25 Senator Jordan. Mr. Chairman, I think you have got to

cc-13 1 think about other things involved in here. The city of Winston-
2 Salem in North Carolina was successful in getting -- I don't
3 know if it is Schlitz or Anheuser-Busch or somebody, but a big
4 brewery into their town.

5 It brought in a tremendous payroll, a lot of capital
6 investment, and so forth. Now, they -- one of the inducements
7 was: "We will bring you through our city disposal plant and
8 our lines which are pretty well already here, but you will pay
9 a sewer tax like everybody else does."

10 Even a private owner of a home in Winston-Salem pays
11 a sur-tax. When the bond issues come along, the bonds are paid
12 for by the tax which is put on the use and that is based on a
13 per gallon thing.

14 Whichever that brewery is, this is not doing him any
15 great favor. They could build their own disposal plant. Lots
16 of times the cities would rather have -- In the first place,
17 if they bring a payroll into the town, that is worth something
18 too. They have to pay the taxes and everything else to operate.

19 In that particular case, they are on a river and they
20 can build their own disposal plant and probably do it cheaper,
21 but the city wants them. I know a textile plant in another town
22 in North Carolina which just made arrangements with the city to
23 come into the city sewer lines, but the city was capable of tak-
24 ing care of it.

25 The city wants it and they pay a sur-tax on every

cc-14 1 gallon of water that goes in there, so there has been a lot of
2 money to build new disposal plants and they have the capacity
3 to take care of them.

4 Now, that helps us, you see. On the other hand, it
5 saves the plant the trouble of running the plant and keeping up
6 with it and the problems in keeping up with it. They have al-
7 ready got somebody to run these plants.

8 We have got to be careful here that we don't run busi-
9 ness off.

10 Senator Muskie. I understand that, but I think you
11 have got a question, when you are dealing with this, as to who
12 pays the local share of the cost of construction and who pays
13 the Federal share of the cost of construction.

14 Now, the waste treatment program is the base on a sys-
15 tem of Federal subsidies from municipal waste treatment plants.
16 Now, if we are going to provide a Federal subsidy for Anheuser-
17 Busch, then we have got to do it for every industry in America
18 that has a pollution problem.

19 Senator Jordan. I don't see it that way at all.

20 Senator Muskie. Why not? Why Anheuser-Busch?

21 Senator Jordan. I think you just don't want to say --
22 In the town of Burlington, there are 70-some-odd hosiery mills
23 in that one town. It is a big hosiery manufacturing town.
24 About half of them have a finishing plant.

25 They dump the dyestuff right into the city sewage, but

cc-15 1 they pay taxes. They pay a sewage tax. They want it. That is
2 what makes the town. If you take them all out of the town,
3 there wouldn't be anyone living there. They wouldn't have any-
4 place to work, so it is a part of your city.

5 When you say: "I am not going to provide water for
6 you or sewage," you don't get anyone to come there.

7 Senator Muskie. We are not talking about water and
8 sewage. We are talking about the treatment of the waste and
9 whether or not we make it across the country a Federal respon-
10 sibility.

11 We haven't yet. We have been talking about the dif-
12 ficulty of providing, over the next five years, \$20 billion to
13 continue that program. Now you are talking about adding to it.

14 Senator Jordan. You are not adding a thing to it.

15 Senator Muskie. Of course you are. Those estimates
16 don't take into account Federal subsidy of industrial waste
17 treatment facilities.

18 Senator Jordan. If they are in the city now, it does.

19 Senator Muskie. No, it does not.

20 Senator Jordan. Well, what are they doing with it
21 then? They are not eating it. They are putting it in some sys-
22 tem.

23 Senator Muskie. Unless I am sadly mistaken, we have
24 not provided Federal assistance for the construction of indus-
25 trial waste treatment facilities, either as separate ones or as

cc-16 1 part of the municipal system, so far as I know.

2 Senator Jordan. You certainly have, whether you know
3 it or not. You have, in every city in North Carolina.

4 Senator Muskie. Then something slipped by the Agency
5 because ---

6 Senator Jordan. No, it didn't.

7 Senator Muskie. Everett, I know that in my state they
8 have refused to go forward with plans for joint systems in which
9 the industry was willing to assume its own capital costs, so
10 don't tell me that this is part of the present policy. It is
11 not.

12 We have approved in present law combined waste treat-
13 ment facilities, industrial and municipal, not on the basis of
14 a Federal subsidy or the cost of the industrial portion, not at
15 all.

16 Senator Jordan. Well, how would you go into Burling-
17 ton, for instance, to these 75 hosiery mills and say: "We are
18 going to take you out of the sewer. We are going to leave you
19 out."

20 Senator Muskie. I am not talking about sewers. We
21 are talking about treatment facilities. We don't say we are
22 taking them out. What we are talking about is who pays for it.
23 Does the Federal government accept the responsibility for pro-
24 viding for the cost of building the capacity to take care of
25 all industrial wastes?

cc-17

1 Now, we have not done that ---

2 Senator Jordan. Yes, you have.

3 Senator Muskie. No, I haven't. I beg your pardon.

4 We have not.

5 Senator Jordan. I tell you what ---

6 Senator Muskie. You couldn't conceivably do it for
7 the amount of money we are talking about.

8 Senator Jordan. Yes, you do. Go down to the town of
9 Burlington ---

10 Senator Muskie. I would be interested to do that.

11 Senator Jordan. They have had several grants in the
12 present program. Now, they are not going to say: "We are going
13 to take out this and that". It is a town. They pay a tax just
14 like everybody else.

15 Senator Muskie. Let us check it out specifically.

16 Senator Jordan. But those industries are part ---

17 Senator Muskie. Just find out if it is the case that
18 the Federal government has used Federal money to pay for the
19 industrial capacity. Find out whether it has and whether it is
20 the case elsewhere.

21 This is an entirely new development to me.

22 Mr. Billings. The issue is raised ---

23 Senator Muskie. It is amazing to me if this is the
24 case.

25 Mr. Billings. The issue raised by the General

cc-18 1 Accounting Office, in view of the program under the '66 Act
2 where it was found that Federal grants had in fact been used to
3 construct facilities primarily for the purpose of industrial
4 waste treatment -- As a result of those findings, the Agency
5 developed regulations requiring repayment of the cost of the
6 waste treatment associated with that industrial share.

7 Now, that money does not come back to the Treasury.
8 The law does not provide for it to come back. That is the rea-
9 son it is in there.

10 Senator Bentsen. What did you say happened to the
11 money?

12 Mr. Billings. The community required industrial charges
13 to cover that portion of the cost attributable to the industrial
14 waste treatment.

15 There is an exception procedure, whereby for showing of
16 substantial economic needs, an industry can get in without pay-
17 ing the entire cost.

18 There is also a percentage requirement, where more than
19 30 percent of the waste attributable are industrial, in which
20 this regulation is triggered.

21 In any event, the statutory basis for industrial waste
22 treatment -- The statutory basis for the user charges is very
23 vague and this is how we got to this provision in the first place.

24 Senator Tunney. Where does the money go?

25 Senator Bentsen. I never did get an answer to that.

cc-19 1 Mr. Billings. It goes back to the community because
2 there is no provision for recovering it to the Treasury.

3 Senator Jordan. Everyone of these people pays a tax
4 just like anybody else, so they are not getting it free. That
5 helps to pay for the plant and to amortize the loans or what-
6 ever it is.

7 Nobody is subsidizing them anymore than a resident
8 who lives in that town.

9 Senator Beall. Isn't it true that under the GAO rul-
10 ing that even today you are only concerned about those places
11 where the industry uses more than 50 percent of the capacity of
12 the facility?

13 Mr. Billings. I think it is 30 percent, Senator.
14 There is a situation in Maine where the industry and the com-
15 munity applied for a grant for the industry, which would be
16 the cause of more than 80 percent of waste in the system, and
17 that grant was denied because it would be less than 30 percent.

18 Senator Muskie. So what we are faced with ---

19 Senator Beall. I think all over this country there
20 are industries that are using sewage treatment facilities that
21 were built with a Federal grant and for which the industry is
22 making no contribution now, as far as capital cost of construc-
23 tion for that facility is concerned.

24 Mr. Jorling. The national average, at least the ones
25 that NBA gave us most recently, was the national average of

cc-20 1 industrial use in municipal plants is 50 percent. Fifty percent
2 of municipal treatment plants are used to treat industrial
3 waste.

4 Senator Muskie. Without any obligation to pay the
5 capital?

6 Mr. Billings. Without any obligation, until these new
7 regulations are promulgated, to repay the Federal share of the
8 capital cost. Many, many communities have sewer charges which
9 are sufficient to recover capital costs and interest costs and
10 so on from all of the users.

11 The problem is that it is on a rather ad hoc basis.
12 It varies widely from community to community as to actually how
13 much is recovered.

14 In fact, it is a rather well-known subsidy in terms
15 of attracting industry into a community.

16 Senator Jordan. I live on the river in a small vil-
17 lage. Right above us on the river, we have a treatment plant
18 put there in 1962. We paid for it totally with no help from
19 anybody, I am sorry to say.

20 Every town up the river that is not incorporated,
21 where there is a plant, built its own disposal plant under state
22 standards and they are operating and checked regularly. They
23 get no help from anybody, but they are industrial plant entirely,
24 plus whatever people happen to live in that village, which is
25 incorporated into it. They have got no financial aid from

cc-21 1 anybody.

2 In the cities, where these plants are located where
3 they use the city sewer system, they pay a sewer tax which is
4 sufficient to maintain it and retire the debt. There is no way
5 to separate that because it is incorporated in what they pay.

6 If you charge them more, Ed, than they can do it them-
7 selves, they will go out and build their own plant.

8 Senator Muskie. All I am saying is that however wide
9 the door has been opened up to this point, it has not been opened
10 all the way. If it is opened all the way, we have got to revise
11 upward the estimates of the Federal contribution that has to be
12 made.

13 You cannot take a \$20 billion estimate that is based
14 on an estimate of the cost of dealing with municipal waste and
15 just, without any consideration at all, include the construction
16 of industrial capacity across this country. The dollars don't
17 stretch quite that much.

18 If we make the conscious decision that, however much
19 the door has been opened now, we are going to open it all the
20 way for the construction of industrial capacity without any
21 obligation upon the industry to repay it, then we have got to
22 revise our estimates of how much money we have got to authorize
23 and appropriate for this purpose. That \$20 billion does not
24 cover it. That is clear.

25 Senator Beall. Mr. Chairman, is the concern here one

cc-22 1 that industry not so much of paying the cost, but maybe being
2 charged twice for the same cost and that, if the industry pays
3 initially on the basis of the cost of construction of the faci-
4 lity and also pays on the cost of replacement of the facility,
5 he is paying for two plants at the same time.

6 Mr. Billings. We will resolve that.

7 Senator Muskie. No, not in that form, because it is
8 obvious that by replacement costs you are not talking about a
9 duplicate plant, a substitute plant being created at some point
10 in the future.

11 When you are talking about replacement dollars, you
12 are talking about replacement of machinery, not about land, not
13 about the structure. It is really maintenance of deteriorating
14 equipment.

15 We are not asking them to pay twice.

16 Senator Beall. I know, but the point is that that is
17 a concern, and we have to resolve the definition of replacement
18 costs.

19 Senator Muskie. I am sure that industry understands
20 that when you build a capital facility they do it themselves,
21 that replacement of parts that wear out is something that you
22 have to take into account.

23 Senator Beall. The concern that is expressed by muni-
24 cipality and state is that the definition won't be clear enough
25 to make that point.

cc-23 1 Senator Muskie. We will make that point clear.

2 Senator Eagleton. Is that the only concern as to the
3 treatment of industrial waste?

4 Mr. Billings. There is another issue.

5 Senator Muskie. Apparently there are two other issues
6 1) whether or not the states should be allowed to subsidize in-
7 dustry for their share of the cost of industrial capacity; 2)
8 whether or not we should subsidize industry with respect to the
9 Federal share of the cost of the industrial capacity; 3) the
10 extent to which industry itself is asked to repay any of the
11 cost, where should that repayment go with respect to the Fed-
12 eral share. The community or the Federal Treasury?

13 These are the three issues. It involves billions of
14 dollars. It is not just something you can slip by.

15 Senator Tunney. Mr. Chairman, I certainly feel that
16 you make a most persuasive case for having industry pay for their
17 share of the cost of building waste treatment plants and for a
18 reasonable fee for replacement of equipment to maintain the op-
19 eration of the plant.

20 I am just curious to know if there is anybody in the
21 room who disagrees with that position that you have enunciated.

22 Senator Muskie. Unless -- Let me make another point.
23 One of the reasons that we have developed this concept was be-
24 cause of the pressures from some quarters to abandon this whole
25 approach with respect to industry and create an effluent tax,

cc-24 1 the whole idea being that you just impose upon industry a cost
2 that measures the cost of dealing with effluents, thus forcing,
3 by punitive tax, called an effluent tax, to build their own
4 facilities or to create the revenue base for public construction
5 of industrial waste treatment facilities.

6 Now, there is a very strong body of opinion among
7 those concerning themselves that that is the approach you ought
8 to take. You ought not to fool around with water quality stan-
9 dards or effluent standards. Just tax every industry on the
10 basis of the amount of pollutant and the quality of it and the
11 difficulty of dealing with it that it discharges in the water-
12 ways.

13 Then that ought to trigger a real effort on the part
14 of industry to deal with its own wastes. Now ---

15 Senator Jordan. On the other hand though, Ed ---

16 Senator Muskie. So what we have developed here as an
17 alternative is a positive constructive program of trying to
18 stimulate the construction of waste treatment facilities, assess-
19 ing industry a fair share of this cost, if it wishes to partici-
20 pate in public facilities, as a sound alternative to that
21 approach.

22 Now, if it is going to be a complete subsidy of in-
23 dustry, you are going to find a real issue raised on the floor
24 of both Houses.

25 Senator Jordan. I don't think you have got industry

cc-25 1 subsidy there at all. Let me go back again. A plant that I
2 know of built their own plant entirely. It all goes in the
3 river. It has got to go in the river because there is no other
4 place for it to go in the world. It can't go up in the air be-
5 cause it wouldn't stay.

6 Now they have got to meet the standards set by law
7 with what they put in the river. You have got nobody to blame
8 for anything. They have met the quality standards of the law.
9 They have built the plant to fix it. They operate their own
10 plant and paid for it, so there is no reason you are going to
11 tax him for the water he puts in there after he treats it so it
12 is perfectly all right to meet the law.

13 Senator Muskie. Well, Everett, this system has not
14 worked. One of the issues we are going to get to, in cost
15 consideration of this bill, is whether or not -- to what extent
16 to modify the water quality standards approach by effluent con-
17 trol approach, because it has been very difficult to translate
18 water quality standards into direct and specific effluent limi-
19 tations.

20 In other words, there is no way of predicting in ad-
21 vance whether the particular effluent limitation is going to
22 produce the particular water quality standards or water quality
23 results.

24 This is why we have been trying to develop in this
25 bill a more realistic and effective way of dealing with it.

cc-26 1 There is still some question in what we have in the Sub-commit-
2 tee and that is one of the issues we are going to raise later.

3 Senator Jordan. What do you want to set a standard
4 for, if you don't know what it is going to do?

5 Senator Muskie. Well, because if you set a standard
6 A, B, C, and D, with A as the highest quality you want, there is
7 no way that can minimize litigation from industry that you can
8 say: "That means that industry X has to control his effluent
9 to a certain extent." There is just no way at the present time,
10 especially when you have got a lot -- There is no way of creat-
11 ing a model apparently for the mix that you get from the results
12 to predict in advance how much a given industry has to limit its
13 discharges in order to produce a given quality of water, so we
14 have got to move and do something that will work better than the
15 present system.

16 Now, one way of doing that is an effluent tax, which
17 is proposed. We have got testimony. Everytime we have had
18 hearings, there has been a strong body of opinion. There is an
19 amendment before the Committee on this, which has been introduced
20 by Senator Proxmire.

21 I am sure that unless we find some other alternative
22 to that that he is going to press it strongly and he is going
23 to get support.

24 I have never been sold on the effluent tax.

25 Senator Jordan. I don't see how you could have any

cc-27 1 effluent tax. You could have one ---

2 Senator Muskie. You could have one if you enact it.
3 That is easy.

4 Senator Jordan. You can tax everything, but you don't
5 want to get plumb stupid.

6 Senator Muskie. There is something very close to it
7 being used in Germany now in the Ruhr River valley. It is pro-
8 ducing a clean-up in the Ruhr River. It has produced it. It
9 is very close to it.

10 It is not precisely what the effluent tax proponents
11 say it is, but it is close enough to it so that its existence
12 makes a very persuasive argument. That is why I, in order to
13 avoid that result, have tried to propose this alternative.

14 If we go beyond this to say: "The public Treasury is
15 going to provide all the capital costs for building industrial
16 capacity," it is just going to trigger the reaction in which
17 they are going to say: "You are going to put it all on indus-
18 try."

19 Now, that is what you have got.

20 Senator Jordan. Let me make an observation and see if
21 I know what you are talking about. North Carolina was one of
22 the first states in the Union, maybe the first, that classified
23 all their waterways.

24 They classified according to the use of the river, how
25 large it is, and where the river goes and how much water is in

cc-28 1 it and a great many things.

2 In other words, some streams going to wind up in the
3 city of Greensboro. They have three big lakes now, which are
4 used entirely for consumption of the city of Greensboro. They
5 have got very strict reulations as to what can be put in those
6 streams, because that is going to be drinking water.

7 It still has to be filtered and chlorinated and all
8 the things it goes through because it is not drinking water when
9 it goes in there.

10 Other streams are going to be used for navigation and
11 a great many other things that are classified less, because they
12 don't need to be. Cities do take that water out at different
13 places for the city supply.

14 They chlorinate it and all those things that go through
15 it, but they don't all need to be the same thing. You don't want
16 to try to make drinking water out of every stream you have got,
17 because that would completely be prohibitive in costs and they
18 don't need to be.

19 They do need to be clean enough that the water can be
20 cleaned up and useable for swimming and fish and the things for
21 which we normally use rivers. That would take care of the or-
22 dinary pollutants.

23 I think that is what we want to arrive at in this kind
24 of legislation. We don't want to turn it into drinking water
25 right off the bat, because you couldn't do that if you wanted to.

cc-29 1 Senator Muskie. Well, the question of what quality
2 water you are going to achieve is one that the Sub-committee
3 considered in the Tunney amendment and so on.

4 Senator Jordan. I don't think the sub-committee knows
5 and I don't know.

6 Senator Muskie. Wait a minute. That is not what we
7 are talking about here. What we are talking about is whatever
8 quality of water you finally decide by whatever mechanism by
9 whatever standard you achieve, it obviously is going to mean,
10 if we want something better than we have got, some clean-up of
11 both industrial and municipal wastes.

12 It is going to involve clean-up by municipal waste
13 treatment plans and it is going to require clean-up by indus-
14 trial waste treatment plants.

15 The question is to what extent do we try to serve both
16 of those functions through public plants. If we try to do it
17 through public plants, what share of the cost should be borne by
18 the local public treasury, what share by the Federal Treasury,
19 what share of cost by the industry itself?

20 Now, that is what we are talking about. Up to now,
21 with the limited exceptions that we have referred to here today,
22 the public, at least on the Federal contribution has been used
23 to build public capacity, the capacity to deal with the municipi-
24 pal wastes, not the industrial wastes.

25 Now, the question that has been opened by this

cc-30 1 discussion is whether or not the Federal Treasury should also
2 build the industrial capacity. Whatever the event in the ex-
3 ceptions up to this point, this has not been the general pol-
4 icy.

5 The authorizations we have enacted have not taken that
6 into account. What we are talking about is a greater cost prob-
7 ably than the cost of building the public capacity.

8 So it is a serious question of how much more commit-
9 ment we are ready to make from the Federal Treasury. I am not
10 ready to go that way. That is all I am saying.

11 Senator Bentsen. I would agree with you, Ed, as far
12 as the Federal government not paying for industry's additional
13 capacity on waste treatment.

14 Something was said almost casually at the beginning
15 and I would like some more reasons for it. I believe the point
16 was made that we wanted to encourage industry to use the public
17 waste treatment plants.

18 Because of economics or size? What is the reason for
19 that?

20 Senator Muskie. Well, the incentive that we have al-
21 ways thought of as a sound one is to build a capacity with Fed-
22 eral funds, but to require that the industry repay. You see,
23 this is all the incentive that industry has ever suggested that
24 it needs.

25 Senator Bentsen. I am not arguing that. What is the

cc-31 1 reason why you want industry, instead of building its own plants,
2 to participate in municipal plants? There must be some reasons
3 for that.

4 Senator Muskie. We never regarded it as necessarily a
5 national objective that they do, but we understood that in many
6 communities, this would be a desirable way of achieving the ob-
7 jective of cleaning up both industrial and municipal wastes and
8 we want to make that possible in a one-horse town with one in-
9 dustry which is the major taxpayer.

10 It makes some sense.

11 Senator Bentsen. So you have some economies of size
12 possibly.

13 Senator Muskie. Yes, plus the principal taxpayer can
14 plan his or its capital expenditures and his operating expendi-
15 tures.

16 Mr. Billings. There is also a valid regulatory basis
17 for this. The city of Chicago, which receives most of the wastes
18 from the industries located in the metropolitan sanitary dis-
19 trict's service area, has greatly reduced the number of indivi-
20 dual out-falls into the various rivers, thus reducing the poten-
21 tial sources of pollution and so on.

22 At the same time, it is able to know exactly what is
23 coming into their system and exactly what time and, addition-
24 ally, having the people of Chicago benefit from the industrial
25 sur-charge, the part of the over-all base for funding the

cc-32 1 facility, so there is that advantage.

2 Senator Eagleton. There is a third factor too. If
3 many industries cease using municipal treatment facilities, you
4 would have greatly under-utilized existing capacity.

5 Senator Muskie. That is right. That is a different
6 question with respect to those situations.

7 Mr. Billings. There is one additional point on that.
8 On this question of subsidy to industry, industries in the world
9 of theoretical economics will select the cheapest way of accom-
10 plishing waste treatment objectives.

11 If they are subsidized through the municipal plant,
12 then they may not reduce the waste that is generally through
13 their plant to the maximum degree that is feasible, whereas,
14 if they are on a clean cost comparison basis as between a non-
15 subsidized municipal treatment operation and a choice of doing
16 something on their own, they will select whichever is most eco-
17 nomical and make that judgment and proceed from there, which
18 means that the product pricing relationship is going to be much
19 more clear.

20 In terms of plants located in different kinds of
21 areas, there is much less of a comparative adverse effect, one
22 plant being able to go into a municipal system and one plant not
23 being able to.

24 Senator Jordan. I think you are saying exactly what
25 I kept saying all the time: That a plant that is there now has

cc-33 1 helped pay for that plant through the taxes that have been im-
2 posed on him in any form you want to put it in.

3 He has got a tax to pay. When he came in, he got a
4 sewer tax to pay every month for the gallons he puts in there,
5 so he is not being subsidized any more than the folks that have
6 a house on a lot.

7 Senator Muskie. Well, let me say something there now.

8 Senator Jordan. You are talking about if you wanted
9 to build a new plant.

10 Senator Muskie. I am not trying to upset any arrange-
11 ments that have already been made. I am talking about arrange-
12 ments from now on. Let me touch on the point you made.

13 In the town where I was born, the local paper company
14 pays better than half the municipal taxes. I forget what it is,
15 but let us call it 50 percent.

16 The waste treatment facility is built to deal with the
17 public wastes. That paper company is going to pay for half of
18 the cost of the public taxes that are necessary to support it,
19 including the local share of the cost of the plant and the cost
20 of operating and so on.

21 If you had industrial capacity, however, sufficient to
22 deal with that mill's industrial wastes as well, then what you
23 are talking about is that mill not as a taxpayer, but as a user,
24 as a discharger.

25 Senator Jordan. What are they doing with it now?

cc-34 1 Senator Muskie. There is none. There is no effective
2 treatment.

3 Senator Bentsen. Let me make this point.

4 Senator Muskie. They have a very stinky river.

5 Senator Bentsen. I really don't believe that there is
6 an argument here. It seems to me that what Everett is saying is
7 that where you have a tax and a fellow is paying his part of it,
8 he feels he is already making his contribution there.

9 The Chairman is saying that if we come in with Federal
10 money and add to it, in that instance he is not being taxed on
11 that. To the extent that there is an additional amount spent of
12 Federal money, the industry itself should pay its pro rata part
13 of it.

14 They are not paying taxes for that. That is Federal
15 money coming in.

16 Senator Muskie. That is right.

17 Senator Jordan. In your case with the paper plant up
18 there, I know where it is and I know how it smells too. We have
19 got some in North Carolina.

20 What is going to happen to them? Are they going to
21 have to put in a disposal plant of their own and pay for it,
22 enough to take care of whatever they put in the sewer system in
23 the city?

24 Senator Muskie. Yes.

25 Senator Jordan. And that is what they would expect to

cc-35 1 do.

2 Senator Muskie. Yes. That is what we are talking
3 about.

4 Senator Jordan. But I don't think that we need any
5 legislation to take care of that.

6 Senator Muskie. No, but -- Yes, we do because we have
7 to, in the event that the capacity deals with their problem as
8 part of the public facility, have some policy as to what -- who
9 is going to finance, who is going to pay for it, and so on.

10 Otherwise, there is no Federal policy to deal with the
11 situation. That is why we have written the policy.

12 Senator Jordan. You are talking about if your paper
13 plant now brings its effluent right back into the city system --
14 He is not doing it now.

15 Senator Muskie. There is no city system, so the ques-
16 tion is whether they build a system to take care of just the
17 municipal waste or whether they build it big enough to take care
18 of the municipal waste and the industrial wastes.

19 It is a question of doubling the cost, in effect. If
20 they decide to build a big enough system to take care of the in-
21 dustrial wastes, is that what the mill wants? Is the mill pre-
22 pared to assume the cost of building that additional capacity?
23 If so, on what terms and to what extent should the Federal gov-
24 ernment be involved, if any, in that cost? That is what we are

25

cc-36 1 talking about.

2 Senator Jordan. You don't have a sewer system in the
3 town now?

4 Senator Muskie. There is a sewer system, but there is
5 no waste treatment system.

6 Senator Jordan. None at all?

7 Senator Muskie. No.

8 Senator Jordan. A little bit backward.

9 Senator Muskie. No. I will tell you why. This is
10 why my ears perked up when you were talking about your North
11 Carolina situation.

12 They worked out an agreement with the community two or
13 three years ago to build a combined plant. The mill was prepared
14 to pay its share of the capital costs. This was all worked out.

15 Because of the failure of the Congress to fund the pro-
16 gram, however, the state, being a small state and not getting a
17 hell of a big chunk, even when it is fully funded, just would
18 not include that at the top of its list of priorities.

19 Instead, it allotted the very little money that it had
20 to communities that did not want a combined plant. In other
21 words, the Federal funds were too limited to permit it and there
22 were about two or three other papermill towns which wanted to do
23 it in Maine, which could not do it because the capital funds were
24 not sufficient to do it.

25 They would be swallowed up too much, to the detriment

cc-37 1 of other towns that were building only municipal waste treatment
2 plants. This is why we need a policy so that we can cover those
3 situations.

4 Senator Jordan. Well, suppose we just completely ig-
5 nore the paper mill, so that is not a part of the city's busi-
6 ness. You just build your own disposal plant. That is what a
7 great many of them are doing.

8 Senator Muskie. That is what we are writing here. We
9 are writing policy. Do we permit joint plants or do we not and
10 what should be the relationship fiscally, operationally, and
11 otherwise in this whole thing?

12 I think there is enough evidence that combined plants
13 are used for public purpose that we ought to provide for them.
14 So, we are just trying to work out the rules, so that we can do
15 it.

16 Senator Jordan. I agree with that part. I certainly
17 agree. In other words, a great many of the industries would not
18 go into a town that didn't have something.

19 Senator Muskie. That is exactly right.

20 Senator Jordan. They would say: "I don't want to go
21 into the disposal business. I don't want to have to pay for it.
22 I pay a sur-tax because I am making this stuff." This is what
23 it amounts to.

24 Senator Muskie. This would be especially in small
25 towns like you have in your state and I have in my state.

cc-38 1 Senator Jordan. We don't want to put a millstone
2 around the neck of industry.

3 Senator Muskie. I don't think we will.

4 Senator Jordan. We don't want to do that.

5 Senator Muskie. The three questions that we will have
6 to vote on -- and again I don't think this afternoon is the time
7 to vote on these things because they all hinge on what we do on
8 the Buckley proposal -- is: 1) whether or not we should make it
9 possible for localities and states to simply underwrite the in-
10 dustrial portion of the capacity if they want to as an industrial
11 promotion effort; 2) whether we should at the Federal level un-
12 derwrite the industrial portion -- and I gather the consensus of
13 the Committee is settling down to "no" on that; and 3) if there
14 is recovery of the Federal share of the capital cost, should it
15 go to the locality or come back to the Federal Treasury?

16 Those are the three issues that we want to vote on at
17 some point when we have gotten to it. Are there any others?
18 Let us get on to the next.

19 Senator Jordan. May I ask a question at that point?
20 Suppose you make an option that they could come into the city
21 system if they wanted to or build their own if they are big
22 enough?

23 What about the tax write-off, where the government
24 goes and says: "You have got to build such-and-such a treatment
25 plant"? Are you going to get into tax write-offs for that?

cc-39 1 Senator Muskie. If they build it themselves, of
2 course they will. If they build it as part of the municipal
3 system and pay for it through their user charges, I would assume
4 the user charges would be deductible as a cost of doing busi-
5 ness.

6 In other words, the difference between buying a plant
7 or leasing it. If you leased it, your rental charges are deduc-
8 tible.

9 Senator Jordan. You have got a five-year write-off
10 now on a disposal plant that was built ---

11 Senator Muskie. You still would.

12 Senator Jordan. What would happen in a new one now?

13 Senator Muskie. If industry puts up the money or bor-
14 rows the money itself to pay for it, then it would have the
15 same.

16 Mr. Billings. Not if it is a new plant a new indus-
17 try built subsequent to that effective date, which is April,
18 1969, or something.

19 The assumption is that a new plant should take into
20 account its cost of waste treatment in its own economics. Un-
21 less there is a change in that tax law, there will be no spec-
22 ial amortization for those plants.

23 Senator Bentsen. Regular depreciation would apply to
24 it.

25 Senator Muskie. They would write it off in accordance

cc-40 1 with whatever depreciation would apply. I don't know about the
2 five year business, but they would write off the cost.

3 Senator Jordan. It would take them a long time to
4 write off a treatment plant for \$2 million.

5 Senator Muskie. I don't know. I don't know the
6 value.

7 Senator Jordan. One of any size costs that much.
8 They bring no return whatsoever.

9 Senator Muskie. Whatever we write, we won't change
10 the tax laws.

11 Senator Boggs. Let me ask one question here. We
12 don't visualize capital cost even from industry would have to
13 be paid immediately. It is just paid for over a period of time
14 in user charges in 30 years or 50 years or whatever.

15 Senator Muskie. Whatever the period is.

16 Senator Boggs. It makes a business expense.

17 Mr. Billings. The industry contribution on the Fed-
18 eral grant part of it would not have to be paid initially. It
19 would be paid over whatever the life of the regulation -- life of
20 the project would be, probably 50 years.

21 Senator Boggs. I think there is a misunderstanding
22 about that.

23 Senator Muskie. I think one argument for requiring
24 repayment to the Treasury is that this program is going to be a
25 continuing one for at least five years. Since we are putting up

cc-41 1 public money, to the extent that it is repaid, if the Federal
2 government is putting it up, the Federal government ought to
3 get it back.

4 It wouldn't be a revolving fund exactly, but in any
5 case it would reduce the burden on the Federal taxpayer of put-
6 ting up that capital cost for industry.

7 Senator Eagleton. Is that only if it is Federal capi-
8 tal or a Federal grant?

9 Senator Muskie. It would be a Federal grant.

10 Senator Eagleton. What about the 15 percent?

11 Senator Muskie. I think the issue as we consider it
12 is whether or not that should be left to the local community.

13 Mr. Billings. Another issue as to where we can re-
14 quire the local government to take the local share. Can we
15 require the local government to recover any state contributions?
16 This is how you handle local contributions when it becomes a
17 little bit sticky.

18 Senator Muskie. I should think if we make it discre-
19 tionary for communities, we ought to make it discretionary for
20 the states.

21 Mr. Billings. That is the point.

22 Senator Muskie. That will have to be decided in state
23 and local relationships to go that route.

24 Mr. Billings. That would be the advantage of having
25 that aspect discretionary, because if you make it mandatory on

cc-42 1 communities, then you just have to ---

2 Senator Eagleton. Make it mandatory to recover the
3 75 percent Federal share and optional on the 15 and the 10 of
4 the state and the municipality.

5 Senator Beall. I have been an advocate of leaving the
6 Federal share at the local level, but it occurs to me that if
7 you allow the locals not to recover their share, they could de-
8 cide to do that because they were going to keep the Federal
9 share.

10 That is an argument against it.

11 Senator Muskie. Could we get into the next item just
12 so that we can get them disposed? We are finding new dimensions
13 of each of these issues.

14 Number 5.

15 Mr. Billings. The issues raised by the Allocation
16 Formula -- The Sub-committee approved an allocation formula
17 based strictly on population. The Administration has requested
18 again, as in earlier legislation, that there be consideration of
19 the need in the water pollution control problem in states in
20 determining allocation.

21 The Sub-committee rejected the initial proposals on
22 a need allocation because of the vagueness of the basis on which
23 such an allocation would be made.

24 There is, however, value in this consideration, if the
25 criteria can be established in which the allocation formula can

cc-43 1 be fairly strictly defined to giving some consideration to the
2 needs of the states because of the vast difference in the back-
3 logs which exist in the various states.

4 Senator Eagleton. Could I raise a point on that one?
5 Senator Beall is interested in this. I don't have the exact
6 figures in front of me, but, as I understand it -- maybe he has
7 them -- if you took the entire D.C. share, as the bill is writ-
8 ten, it still wouldn't be enough even to do Blue Plains and it
9 would consume almost all of the state of Maryland's share.

10 Senator Beall. It would. All of it. And all of
11 Virginia's share.

12 Senator Eagleton. They would have nothing left for
13 Baltimore or Richmond.

14 Senator Beall. It wouldn't consume all of it.

15 Senator Eagleton. But all of Maryland's.

16 Senator Beall. That is a sewage treatment plant down
17 there that is going to take care of Washington, Virginia, and
18 suburban -- the metropolitan Washington area.

19 Mr. Billing. It is polluting the Potomac.

20 Senator Beall. The one that is causing all the pollu-
21 tion in the Potomac. Here we are trying to create a model. As
22 a result of the standards imposed by the intergovernmental
23 agency for the whole region, it has increased the cost of this
24 treatment facility above what would normally be the case.

25 The Federal government is making a substantial

cc-44 1 contribution. We don't allow, in this period, flexibility to
2 make a contribution in the case of an inter-state agency or an
3 inter-state facility, so that all of the local contribution would
4 be consumed in constructing this facility which must be con-
5 structed.

6 It is an already budgetted figure included in the
7 total amount.

8 Senator Tunney. If I understand you, you are saying
9 that all of Maryland's Federal share ---

10 Senator Beall. All of Maryland's Federal share would
11 be used upon this Blue Plains project.

12 Senator Boggs. Is that based on population? --Your
13 allotment?

14 Senator Beall. For two years.

15 Senator Boggs. Are you talking about allotment on
16 population?

17 Senator Beall. On the basis of population.

18 Senator Jordan. If you borrowed the money, you would
19 have it over a period of 20 years or 15.

20 Senator Beall. Interestingly enough, it is more expen-
21 sive under the 75 percent basis than it is under the 55 percent
22 basis.

23 Senator Muskie. Let me say this to you. I have al-
24 ready given you a similar situation in Maine. These two or
25 three or four papermill towns wouldn't get anything because to

cc-45 1 do what they require would use up too much of the state's share.

2 Mr. Billings. There are a number of states which will
3 not use their share, partially because they are well ahead of --
4 They are either well ahead of the program or else they have con-
5 siderably more limited needs.

6 Senator Beall. You see, if the state of Maryland were
7 left alone to do of its own choosing, it could go ahead and pro-
8 vide sewage treatment facilities for the Maryland area and it
9 could do this at a much lesser cost.

10 As a result of legislation and as a result of pressure
11 from the Federal government, however, they entered into this
12 agreement with Virginia and the District of Columbia to take
13 care of this on a regional basis.

14 They have been able to do this under the previous
15 legislation. As a result, a substantial Federal contribution
16 has been made to the construction of this facility which is sup-
17 posedly going to be a model of the whole area because it is the
18 Nation's capital.

19 The way this law is now written, however, Maryland
20 cannot afford to pay its share anymore. The money is not there
21 because the flexibility isn't into the Act which gives the
22 Environmental Protection Agency the authority to make its con-
23 tribution and the percentage of its share.

24 Mr. Jorling. Perhaps I can explain on that. When the
25 Administration submitted the \$2 billion request for fiscal '72,

60-46 1 which has been appropriated, the Administration submitted on the
2 basis of their own allocation formula in the bill submitted and
3 pending before the Committee, which provided 20 percent of the
4 money would be held for the discretionary fund by the Adminis-
5 trator, and it was out of that 20 percent fund that they were
6 going to fund the D.C. share or the Federal share of the Blue
7 Plains project.

8 They had some other severe problems that they were
9 going to also account for in that 20 percent fund. Senator
10 Beall points out that the bill provides no discretionary money
11 to the Administrator.

12 All of it goes by straight population allocation,
13 which would operate to exhaust Maryland's fiscal '72, '73 share
14 and the D.C. share.

15 Senator Muskie. Just a point of information. To
16 whom is this Federal contribution for this combined project
17 given?

18 Mr. Jorling. I think the Federal contribution here is
19 to each of the jurisdictions: D. C., Maryland, and Virginia.

20 Senator Muskie. Now then, would the obligation fall
21 only on Maryland?

22 Mr. Jorling. It doesn't fall only on Maryland. The
23 population allocation would give Maryland so much money, D. C.
24 so much money, and Virginia so much money.

25 That amount of money would be used entirely for each

cc-47 1 of those jurisdictions' contribution to the Blue Plains project.

2 Senator Bentsen. Tom, when you talk about funding it
3 in two years, you don't mean fund the whole project in two years.
4 do you? Are you giving a realistic time span on this thing?

5 Mr. Billings. You have to obligate the funds.

6 Mr. Jorling. The entire amount is obligated out of
7 that share for that project. Dispersements are not made until
8 the construction becomes due.

9 Mr. Billings. Dispersements made over a five or six-
10 year period. You have to obligate the Federal bond.

11 Mr. Meyers. Instead of the population approach, if
12 you took the approach that was suggested by the House staff
13 that you go on the basis of allocating on need based on those
14 \$12 billion submission from EPA, would that change the situa-
15 tion with respect to this particular problem?

16 Mr. Billings. The point there -- The point with the
17 \$12.6 billion figure is that it does not take into account cer-
18 tain projections of the states which are not agreeable.

19 Senator Muskie. I am still puzzled by this project.
20 Now you say that Maryland could do its share of the job cheaper
21 by itself. Is this true also of D. C. and Virginia?

22 Senator Beall. You wouldn't have an integrated sys-
23 tem. It is impractical to do that, you see, from a purely good
24 water pollution control standpoint.

25 Senator Muskie. Moving away from that ---

cc-48 1 Senator Beall. Congress legislated against them doing
2 that. Congress insisted that the area be treated as a metropol-
3 itan area.

4 Mr. Jorling. Maybe I can go through it. The facility
5 cost \$360 million. That total figure is allocated according to
6 the use to the three jurisdictions involved: Maryland, D. C.,
7 and Virginia.

8 Under the straight line population allocation, each
9 of those jurisdictions would receive an amount of money which
10 would be, in the over-all sense, insufficient to come up with
11 \$360 million.

12 Moreover, it would exhaust each of the allocations
13 made, except in Virginia, I guess. It would exhaust D. C.'s
14 total allocation, which is all right, because this serves their
15 entire population.

16 With respect to Maryland, however, it would exhaust
17 the entire state-wide allocation just for their contribution
18 into this particular facility.

19 It is under an enforcement conference order of the
20 Agency to get the thing on line within two years, so the ques-
21 tion comes up of how to fund it.

22 is
23 Senator Muskies. What strikes me/that the over-all
24 funding of the program is inadequate.

24 Senator Jordan. All right. It seems to me ---

25 Senator Muskies. The point I raise is that if that is

cc-49 1 the case, that the proposed funding is inadequate, if you pro-
2 vide for this sort of a situation, what you tend to do is take
3 money away from other states that face similar problems, maybe
4 not on such a great scale, but on some scale.

5 Mr. Billings. I think the Agency argued that if you
6 had a formula based strictly on need, the authorization would
7 be adequate.

8 Senator Bentsen. The formula based on need would be
9 an exceedingly difficult one to arrive at, I would think.

10 Mr. Jorling. Considering the method of collecting the
11 data, it certainly would be.

12 Senator Jordan. Aren't you talking about paying for
13 this in three years? The total cost of it? It seems to me in
14 a case like this that there are going to have to be some bor-
15 rowing power here and set this up where it can be paid over a
16 period of years.

17 If everybody is going to have to pay for it in three
18 years ---

19 Senator Beall. It is the Federal government's share
20 we are talking about. Of course, Maryland is borrowing its
21 share. This is the Federal share.

22 Senator Jordan. This \$360 million?

23 Senator Beall. Yes.

24 Senator Jordan. Heap big plant you are going to
25 build.

cc-50 1 Senator Beall. This thing is mandated by the Federal
2 Potomac Enforcement Conference.

3 Senator Jordan. We may have to get a new Conference.

4 Senator Beall. The Congress has said that they want
5 the Washington metropolitan area to be made an example for the
6 rest of the nation. It has been estimated that as a result of
7 making it an example, the costs have been escalated by about
8 \$200 million.

9 Senator Muskie. I have no objection, but what troubles
10 me is that just because of the nature of the problem, the number
11 of jurisdictions involved, you get involved in a mechanism for
12 Federal funding a share of the cost.

13 I can see that repeated over and over again across
14 the country in the metropolitan areas and even in some small
15 towns like the ones I have talked about.

16 If we put together a mechanism that solves this prob-
17 lem, the effect of which is to -- If you have got a \$20 billion
18 program that is adequate for the whole country, the allocation
19 is wrong.

20 What you do is take 20 percent off the top, \$4 billion,
21 discretionary that is going to go to the places that squeak the
22 loudest. You will have reduced the over-all.

23 This pinches the small states because small states'
24 shares aren't that big. You pinch a lot of places in the town
25 you are relieving the pinch, and legitimately so, so I am worried

cc-51 1 about the way we do it.

2 Senator Bentsen. Mr. Chairman, is there any discre-
3 tionary money in this at all?

4 Mr. Billings. One year after this initial obligation.
5 In other words, one year after the beginning of the fiscal year
6 for which the money is made available under the law, anything
7 that is not obligated for projects in a state to which it is
8 allocated becomes eligible for re-allocation in states where
9 there is a need for the priority given to states which are match-
10 ing 50 percent.

11 Senator Bentsen. There would be a rush to get their
12 money obligated then, wouldn't there?

13 Mr. Billings. That is right. The states would come
14 in and say: "This is how many projects we have got," get their
15 projects approved, get their obligations.

16 The fact is that some of this money has come back
17 each year from states like Montana, Idaho, and Wyoming, places
18 with relatively small allocations, but places also with a very,
19 very small identifiable need.

20 The states with very serious problems ---

21 Senator Tunney. Are you making a specific proposal,
22 Senator Beall?

23 Senator Eagleton. Is there any way, rather than mak-
24 ing it -- The worry you have, on a percentage fund at 10 percent
25 of \$20 billion is \$2 billion. Over a span of years, it lends

cc-52 1 itself to political determinations.

2 Senator Beall. We don't put it on percentage. We
3 say \$200 million.

4 Senator Eagleton. I was told, although I don't know
5 where I got this, that there are about six projects around the
6 country that were in a similar plight, although not identical
7 to, as Blue Plains.

8 Did I get that from you, Tom? I don't know the exact
9 number. I think Bob might have been the transmitter of informa-
10 tion.

11 Apparently the discretionary fund argument of the Ad-
12 ministration is that there are things like Blue Plains, cities
13 that are under enforcement orders to build their facility and
14 have it on line in a certain period of time, which would have
15 this discretionary money available to them, so that they could
16 comply with the time table which has been imposed supposedly by
17 the water quality objective, and that that money is necessary if
18 there is a formula based on population, because that money could
19 not have gotten to those communities any other way, so that the
20 basic argument is that there are certain places around the coun-
21 try that need assistance earlier than the population allocation
22 formula would make it available to them, and they would like to
23 move them along.

24 The other question that I have is -- The House has sug-
25 gested more following the line like the cost estimates in the

cc-53

1 highway program. I don't think that is feasible until after we
2 go through the development plan which accurately assesses plant
3 needs around the country, so that you can get a better ratio be-
4 tween the needs.

5 I think Senator Beall's proposal was to sort of adopt
6 an interim which was a smaller discretionary fund, to put some
7 limitations on it that the Administration's bill did not have
8 for interstate projects, employing advance waste treatment as
9 distinct from merely secondary treatment, and allow the Adminis-
10 trator to make funds available at an earlier date than they
11 would on the allocation program.

12 Senator Tunney. Tom, under the allocation formula, it
13 is unlikely that you would ever get \$200 million returned in any
14 one year, isn't it?

15 Mr. Jorling. Under a \$2 billion authorization, I think
16 the return would be that much or more. I am not sure, but my
17 impression is that it would be higher than that.

18 Senator Tunney. Higher than the \$200 million?

19 Mr. Billings. I think under the \$1 billion authoriza-
20 tion last year, they anticipated a -- sums not obligated of
21 \$192 million. That is 20 percent. That is not really very sig-
22 nificant because the states have not been pushing forward their
23 projects.

24 Senator Tunney. As a point of compromise, one -- Why
25 could you not limit the \$200 million that is contained in

cc-54 1 Senator Beall's amendment to the year '72, and after that you
2 would have \$200 million available for re-allocation because it
3 would be coming back? It wouldn't be allocated and would be
4 available for re-allocation. It would take care of the interim
5 for the fiscal year '72.

6 Mr. Billings. Another aspect here, Senator, ---

7 Senator Tunney. Glenn, does that meet ---

8 Senator Beall. If ---

9 Senator Tunney. --- your problem?

10 Senator Beall. If mine is the only problem, I guess.

11 Senator Tunney. But you are going to have over \$200
12 million available to re-allocation anyway, after the program
13 gets going.

14 Senator Beall. That assumes that the other things he
15 talks about are not in need immediately, the other states.

16 Senator Boggs. Competition for the money.

17 Senator Tunney. But, on the other hand, that was the
18 basis of my assumption, that after the program gets going,
19 according to Committee staff, you are going to have more than
20 \$200 million available to the Administrator for re-allocation
21 because it will not be allocated in the first go-around.

22 Senator Beall. What difference? If he is going to
23 have that \$200 million, what is wrong with saying that \$200 mil-
24 lion shall be allocated in each fiscal year for this specific pur-
25 pose? He has got the other coming back anyway, so he can re-alloc-

cc-55 1 cate.

2 Senator Tunney. Because now he will have both.

3 Senator Beall. No. This is \$200 million of the
4 total.

5 Senator Tunney. Right. But he will have that perman-
6 ently, plus he will have the additional moneys that ---

7 Senator Beall. Which he is going to re-allocate. We
8 are saying here that \$200 million should be used for the speci-
9 fic purpose of applying it to advance treatment methods in inter-
10 state cases where there is a special need.

11 Senator Bentsen. If you are going to give him this,
12 why do you want to allocate it specifically to that purpose?
13 You may have needs intra-state that are more important for the
14 re-allocated funds.

15 Senator Beall. He has that flexibility to use the re-
16 allocated funds, doesn't he?

17 Senator Bentsen. Yes, but I was following his line of
18 reasoning, that, in effect, this was going to be ---

19 Senator Beall. I think John's amendment is which dol-
20 lars you are going to use. In the case of this amendment, \$200
21 million is available each year for this purpose. You are say-
22 ing that after the first year, use this re-allocated money for
23 this specific purpose ---

24 Senator Tunney. Or for any purpose for inter-state or
25 intra-state. For inter-state or intra-state, if you limit it to

cc-56 1 fiscal year '72, you take care of your problem.

2 Senator Beall. To be perfectly candid, Blue Plains is
3 of such immediate importance and has gotten now so much national
4 publicity because it is the national capital, I just don't want
5 to say it is going to take two more years to complete this. I
6 don't want to see anything happen to it.

7 Incidentally, 15 percent of the effluent treated there
8 comes from Federal installations, the Federal government's ef-
9 fluent, including Congress's.

10 Senator Muskie. Now you are talking about ---

11 Senator Tunney. The point I am making is that if you
12 have this \$200 million on a permanent basis given to the Admin-
13 istrator for allocation and then you give to him also the moneys
14 that he is going to receive for re-allocation, which may equal
15 \$200 million too, you give to the Administrator the equivalent
16 of \$400 million-plus every year in a special fund.

17 What I am saying is that, if you limit this \$200 mil-
18 lion to this coming fiscal year, the next fiscal year we take
19 care of your problem and still don't have the situation where
20 the Administrator has that much discretion of funds.

21 Senator Beall. Can you give us the opportunity to
22 check and make sure that the re-allocation figure is sufficient
23 to take care of the year on this?

24 Senator Jordan. Where is that money coming from for
25 that re-allocation?

cc-57 1 Senator Beall. That comes from money from states who
2 don't use their authorized amount.

3 Senator Eagleton. If North Carolina doesn't use all
4 that it is entitled to ---

5 Senator Bentsen. It would be my assumption that what
6 John is saying is that, whether it is re-allocated money or not,
7 for the next two years you would use this if there wasn't
8 enough and maybe for the next one or two years.

9 Senator Jordan. Suppose they get new Federal money,
10 just an ordinary grant, and the cities you are talking about
11 had to pay for this. I know they would have to borrow some
12 money.

13 How would they get the money to pay back a loan?
14 Suppose they borrowed this money? Do they have a user's tax
15 now that generates the funds in the city of Washington? What
16 goes with it?

17 Senator Beall. Yes.

18 Senator Jordan. What do they do with it?

19 Senator Beall. The Federal government makes a contri-
20 bution.

21 Senator Jordan. I know they do. I am talking about
22 the people who use these facilities here. Do they pay a tax?

23 Senator Beall. The Washington Suburban Sanitary Com-
24 mission has a stiff tax.

25 Senator Jordan. What goes ---

cc-58 1 Senator Eagleton. To operate present treatment?

2 Mr. Billings. It is a pay-as-you-go system. It is
3 also retiring the bonds.

4 Senator Jordan. That is what I am talking about.

5 Mr. Billings. I am talking capital debt, the whole
6 thing.

7 Senator Jordan. Retiring bonds that they have already
8 got?

9 Mr. Billings. Right.

10 Senator Jordan. They are probably 20-year bonds, 15
11 or 25 years. I don't know what. Now, we are talking here about
12 paying this thing out in a couple of years out of the Federal
13 Treasury. That is an awful big load to dump at one time.

14 It seems to me that the revenue that they are receiv-
15 ing from all these areas has got to go back in there to pay
16 somebody back or else they are going to get it free from now
17 on.

18 Senator Beall. Don't confuse the local share with the
19 Federal share. You see, the local share is being recovered
20 through the user tax, I would assume. I am not that familiar
21 with D.C.

22 Senator Jordan. I know Federal is supposed to pay a
23 big part of it and they do.

24 Senator Muskie. We are not going to vote on this. I
25 would suggest that the staff look at the amendment that has been

cc-59 1 submitted and take a re-count of the discussion that has taken
2 place and come back with a recommendation. I think, since we
3 are all sympathetic to the problem, it is a question of working
4 out the means, not to create other problems.

5 Senator Tunney. The only thing, Senator, is that I
6 sort of feel that to give the Administrator \$200 million every
7 year in discretionary funds plus the re-allocation funds, which
8 he has at his use, at his discretion, is too much money.

9 Senator Muskie. The staff will have to insure there
10 is no duplication to avoid that.

11 Senator Bentsen. By the same token, Mr. Chairman, I
12 would not agree to a continuous \$200 million a year for inter-
13 state purposes solely.

14 Senator Beall. If you construct the kind of facility
15 that the Federal government EPA thinks are necessary, the cost
16 per person in the District of Columbia would be \$434, according
17 to the state of Maryland tabulation figures. The next nearest
18 cost is New Hampshire with \$196.

19 Senator Jordan. They are going to gold-plate this
20 one.

21 Senator Beall. There are a lot of gold-plated people
22 here.

23 Senator Muskie. Gentlemen, Item Number 6.

24 Mr. Billings. Mr. Chairman, Item Number 6 is a ques-
25 tion of reimbursement for the period 1966-1971. The Sub-commit-

cc-60 1 tee recommends all communities be reimbursed up to 50 percent of
2 costs of waste treatment constructed during that period or what-
3 ever higher amount they would have been eligible for up to 55
4 percent.

5 The Administration prefers to retain the existing re-
6 imbursement formula, which would provide for reimbursement up
7 to 55 percent to those projects that would have been eligible
8 on the basis of state matching.

9 The difference in the two formulas is \$400 million.
10 Additionally, Senator Eagleton has an amendment which would
11 provide reimbursement to 30 percent of cost of approved pro-
12 jects for the period 1956 to 1966, which would be supplemental
13 to and not a substitute for the amendment in the Committee.

14 Senator Muskie. Otherwise, the issue is the same as
15 it was in the Sub-committee.

16 Mr. Billings. Yes, sir.

17 Senator Muskie. How about Number 7?

18 Mr. Billings. Mr. Chairman, the Authorization in the
19 Sub-committee bill is \$20 billion at the rate of \$2 billion in
20 1972, \$3 billion in 1973, \$4 billion in 1974, \$5 billion in
21 1975, and \$6 billion in 1976.

22 The Administration's informal views recommend \$6 bil-
23 lion for three years, included in the Administration's original
24 proposal, which is the same as it was.

25 Senator Jordan. For what?

1 Mr. Billings. For construction grants.

2 Senator Muskie. In other words, the Administration
3 proposed \$6 billion over a three-year period. We have proposed
4 \$20 billion over five years. If we were to consider the Com-
5 mittee's recommendation over three years, the Committee's re-
6 commendation over three years is \$9 billion.

7 Mr. Billings. Which is the equivalent of 75 percent
8 of the Administration's recommended cost, not counting the cost
9 of removing the phosphates.

10 Senator Muskie. So that is the same issue and it is
11 all tied up with the Buckley proposal. Number 8, the Definition
12 of Treatment Works?

13 Mr. Billings. The issue on definition is whether or
14 not the definition of treatment works should be expanded so that
15 the construction grants can be made in the course of separating
16 storm and sanitary sewage necessary to meet water quality re-
17 quirements.

18 Senator Muskie. That is also tied up with the Buckley
19 proposal.

20 Mr. Billings. Yes.

21 Senator Boggs. Was that confined, if I recall, to new
22 projects only? It wasn't confined to individualized ---

23 Senator Muskie. The Buckley amendment?

24 Senator Boggs. Yes.

25 Mr. Billings. There would be no reimbursement.

cc-62

1 Senator Boggs. Oh.

2 Mr. Billings. Each individual project for separation
3 would have to come in for individual approval on the basis of
4 its relationship. The difficulty there pointed out by the state,
5 is that, if funding for separation of storm and sanitary sewers
6 began in the period of 1972 to 1974, the \$9 billion authorized
7 for those years would fall far short of the needs.

8 The additional \$11 billion in '75 and '76 might be
9 useful to that purpose. The \$9 billion is hardly adequate for
10 the cities to meet current needs, without regard to separation
11 of storm and sanitary sewers.

12 Senator Muskie. You might have to make a distinction.

13 Senator Boggs. Yes.

14 Senator Muskie. Finally, Toxic Pollutants.

15 Mr. Billings. Mr. Chairman, the issue of toxic pul-
16 lutants is perhaps the most clearly defined issue of the legis-
17 lation. We have been overwhelmed with opposition to the provi-
18 sion in the statutory prohibition of the discharge of pollutants
19 that the Administrator terms "toxic".

20 The preference on the part of the Agency views infor-
21 mally and a myriad of industries would be to have the Adminis-
22 trator set an effluent standard on toxic pollutants.

23 Senator Tunney. Where would the burden of proof be
24 under the Administration's position? Would the burden of proof
25 be on the pollutor or on the government in establishing effluent

cc-63 1 standards?

2 Mr. Jorling. In my judgment, if the requirement of
3 the Administrator to set effluent limitations for these sub-
4 stances and then that was what he proposed, it would be on him
5 to support that level that he proposed.

6 The function of the Sub-committee bill is to use a
7 vehicle proposed prohibition to shift the burden back on those
8 who are dealing with these substances to show why something
9 greater than zero can be admitted or discharged.

10 Senator Tunney. And the Administration supports the
11 industry point of view, keeping the burden of proof on the gov-
12 ernment?

13 Mr. Billings. The informal Agency views would be
14 similar to those comments received from some industries.

15 Mr. Jorling. We use their own words. They say that
16 presumption of toxicity should be avoided. To me that means
17 they should bear the burden.

18 Senator Muskie. Would this be a compromise? Use the
19 effluent standard approach to put the burden on industry to
20 prove its case, if it challenges the effluent standard proposals.

21 Mr. Meyers. A couple of industries which have spoken
22 to me would have no problem with that, as long as you remove the
23 prohibitions. It just scares the de veil out of them.

24 They said they can make the case for effluent limita-
25 tion.

cc-64 1 Senator Muskie. The burden of proof on the industry
2 to prove the case for a more relaxed standard then.

3 Senator Boggs. What did we do on the air bill?

4 Mr. Billings. The Conference agreed on an effluent
5 standard approach, which can be improved upon.

6 Senator Tunney. As a practical matter, there are, I
7 think, some very far-reaching results of changing the burden of
8 proof. Let us say that the Administrator holds hearings. I
9 don't know. Let us say you have lead.

10 If you had a concentration of lead at 15 parts per
11 billion, let us say that there is proof that it is greater than
12 15 parts per billion, that it is toxic.

13 Let us say that at the rate of 7 parts per billion,
14 there is no information whatsoever. The Administrator feels,
15 however, he has a hunch -- He feels as a result of some think-
16 ing that has been done by experts in his department that it
17 should be 7 parts per billion.

18 If the burden of proof is on the Administrator, he
19 does not have the right to establish 7 parts per billion, be-
20 cause you get into a court action and the court is going to find
21 that there is no reasonable basis upon which the Administrator
22 could determine the 7 parts per billion or greater than that was
23 toxic.

24 So, it would mean then that the Administrator would
25 have to rely on evidence that was brought in at the hearing

cc-65 1 exclusively in making his determination of toxicity. I think
2 that this has, as a practical matter, some very serious far-
3 reaching effects, particularly on the ability of the Adminis-
4 trator to establish a more stringent standard than there is
5 information currently available and when you don't know what
6 the impact of a toxic substance is going to be.

7 It seems to me that industry should have a burden to
8 come in and demonstrate that by putting that toxic substance
9 into a waterway it is not going to harm mankind or harm ---

10 Senator Jordan. The trouble about that is, if nobody
11 knows, I don't know how you are going to set a standard. It is
12 impossible. That is what we are liable to do now.

13 For instance, the Pure Drug folks are trying to set up
14 something like that. They are going to try to say that you have
15 got to prove that it is good, that Vicks Salve is good.

16 A lot of people say: "Well, it is this and that," but
17 you can't prove it is or prove it isn't. Yet, thousands and
18 thousands of people buy it every year and believe in it and it
19 does do certain things.

20 To prove that it is going to do these things, however,
21 is impossible. They will tell you so themselves. Yet, it is a
22 recognized remedy that a great many people use. In fact, the
23 doctor right down here in this capital told me last year to get
24 myself some Vicks and use it.

25 He said it certainly has proved to be beneficial. I

cc-66 1 used it and felt better the next morning.

2 Senator Tunney. If you are going to ---

3 Senator Jordan. I couldn't prove it.

4 Senator Tunney. Then maybe give the Administrator
5 some leeway percentage-wise where he can establish a more strin-
6 gent standard than evidence that is produced at a hearing.

7 Senator Eagleton. Could I ask a question now? Barry
8 says that some industries that talked to him are not as hung up
9 on the burden of proof as what? What are they hung up on?

10 Mr. Meyers. They are concerned about the prohibition.
11 They figure that if the Administrator has the authority to set
12 effluent limitations on substances which are toxic to protect
13 health ---

14 Senator Eagleton. Including zero?

15 Mr. Meyers. Including zero, if that is what is re-
16 quired, then they can come into court and show that 15 is really
17 what it should be and not 7 and the court can make the decision.
18 I don't think they are worried about that. They are worried
19 about setting zero.

20 Mr. Jorling. There is another aspect between eviden-
21 tiary burden in the traditional burden of proof sense. That is,
22 by using the statutory prohibition, you, in effect, shift some
23 of the burden of research to the private sector.

24 If the industry has the burden of coming forward with
25 the evidence showing why something greater than a proposed

cc-67 1 prohibition should be promulgated, they are going to spend money
2 getting scientific research done to show that that is the case.

3 Presently, most scientific research in the area of
4 pollution control, notwithstanding the fact that it is the in-
5 dividual that is putting the material out in the air, is borne
6 by the Federal government.

7 This has the effect of shifting some of that burden
8 back to those who deal in the substance.

9 Mr. Westman. There is an additional point that should
10 be made in relation to the example you gave, Senator Tunney.
11 With lead, it is likely that the Administrator and the Agency
12 and the industry have a fair amount of data on which to make a
13 decision.

14 However, when the hundreds of new synthetic, organic
15 toxic materials come out each year, the industry is going to
16 have this stuff long before the Administrator has a chance to
17 test it.

18 In a sense, the industry is in a better position to do
19 the initial research and might even speak up about the eventual
20 setting of standards, if they take it upon themselves to do the
21 research.

22 At any rate, it certainly would slow down the permis-
23 sion of toxic material being released, if the Administrator has
24 to start doing research, which would take a couple of years.

25 Senator Boggs. On that, Mr. Chairman, I don't know if

cc-68 1 everyone is satisfied with the definition of the term "toxic
2 pollutant" or not.

3 Mr. Billings. The staff is.

4 Senator Boggs. Oh, good. I am sure we will approve it
5 then. It has been brought to my attention that it could be im-
6 proved upon possibly. That is good.

7 Senator Muskie. I think we have covered the points on
8 the agenda. I have asked the staff to identify the other issues
9 which should be presented to the Committee for analysis and re-
10 solution on all of the positions that have been taken by the
11 Agency and so on.

12 There may be others that the members of the Committee
13 would like individually to look into. So, tomorrow at 2:30 in
14 this same room, I would ask the staff to go through the rest of
15 the issues that the staff feels ought to be presented.

16 If the members of the Committee would like to raise
17 others that they would like to present, we could get to that if
18 we have the time.

19 I think we also ought to agree on a time and a date
20 for Senator Buckley to present his problems for action by the
21 Committee. I would hope that that date is next week, so that
22 we can then vote upon these others which hinge upon the reso-
23 lution of that proposal.

24 Senator Tunney. I would like to offer my amendment
25 sometime, Mr. Chairman.

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Senator Muskie. We will get to that tomorrow also.

Senator Boggs. I think we did a lot today, Mr. Chair-
man.

Senator Muskie. The Committee stands in recess.

(Whereupon, the Committee was recessed at 5:30
o'clock p.m., scheduled to resume at 2:30 o'clock p.m., Sep-
tember 17, 1971.)

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AFTER RECESS

Senator Muskie. The Committee will be in session.

I thought we might ask the staff to describe each of the other issues on this agenda so we can understand what the form of each issue is at this point.

We will begin with Number 3. Let us go through them and let us discuss each of them so we can see clearly what it is that we have to resolve, even though we are not ready to proceed with the vote.

Mr. Billings. Mr. Chairman, the issue in Number 3, the percentage of Federal grant, is as between the Sub-committee bill, which provides a 60 percent Federal grant going to 75 percent on a graduated basis, if the state participates with up to a 15 percent grant.

The Agency staff's informal views prefer to retain the existing formula of a 30 to 55 percent Federal grant, depending on the state match of 25 percent.

Senator Muskie. Is the Agency still inclined to use state loans as the same as state grants for the purpose?

Mr. Billings. The Agency has not taken a position on that issue. There is no indication that they have changed.

Senator Muskie. Does the Agency understand that one reason we are proposing to increase the Federal participation is because of that?

Mr. Billings. That was made very clear to them.

with a two-part agenda in Commerce, ocean dumping being the first item on the agenda.

I pointed out yesterday to this Committee in executive session, when it expressed its concern with the jurisdictional questions arising from the general referral of the House passed bill, and suggested that it was the interpretation of the Parliamentarian that it would require the action of both the Commerce Committee and the Public Works Committee in order to present a bill to the Senate floor for action.

There was no allocation for jurisdiction as is usually the case, only a general and unrestrictive referral, and that on this basis I felt that the Public Works Committee was strongly determined to maintain its jurisdiction in the pollution field, that it had no desire to intrude into the jurisdiction of the Commerce Committee in matters of transportation, or matters originating beyond the continental limits of the coastal waters of the United States, but that unless we did something, it seemed to me that we were going to have a floor fight, and that I had proposed yesterday on Public Works, that we have an informal ad hoc committee of either the full Commerce and Public Works Committees, or the Chairmen, or their designees, to try to work out ground rules and guidelines for resolving this question.

After some discussion in Commerce this morning, that was agreed to by Senator Hollings who was presiding in the

1 absence of Senator Magnuson, and it was agreed that Senator
2 Magnuson and Senator Randolph, and such additional members of
3 their respective committees, as they might wish, would get
4 together informally after Senator Magnuson's return, try to
5 work out the jurisdictional problems, and in the meantime
6 the bill would be taken off the calendar.

7 I would recommend that we do request our Chairman to
8 confirm the meeting with Senator Magnuson, and we simply
9 defer any action on ocean dumping as the Commerce Committee
10 will enter that matter as it occurs.

11 Senator Muskie. I think it makes sense to proceed in
12 that way.

13 I see no sense in precipitating a floor fight over
14 jurisdiction, with all of the rights we feel about our pre-
15 ogatives, I do not feel we could be so stubborn as to ignore
16 the view of the other Committee.

17 Senator Baker. I recommend, Mr. Chairman, if I may,
18 the Chairman of this Committee might direct a letter to
19 Chairman Magnuson confirming my understanding.

20 Senator Muskie. I think that is sound, and the
21 objective of that meeting, as I understand it, is to attempt
22 to resolve the two points, I would guess, one, the question
23 of the jurisdiction of the two Committees in this field, and
24 which are covered by the ocean dumping bill, and, two, to
25 apply that to the bill, so that each Committee will have a clear

1 idea of what aspects of the bill are subject to jurisdiction,
2 as to which it has responsibility.

3 Senator Baker. I think the third item, I think that
4 in a meeting it should also be discussed a method of coordi-
5 nating the respective jurisdictional activities of the
6 Committee.

7 Some parts of this bill which may be clearly in the
8 scope of the Commerce Committee must be coordinated and
9 related to the activities that are clearly within the
10 jurisdiction of this Committee, enforcement, standard setting,
11 and other problems.

12 Senator Muskie. Hopefully, if we can resolve all of
13 these questions by such a meeting, the results ought to be
14 spelled out in the Committee reports in order to forestall
15 subsequent jurisdiction conflicts in the area.

16 I am getting a little fed up with these constant
17 sniping battles. It is no fun. I do not like even fighting
18 for my own jurisdiction. It is only self-serving and frus-
19 trating, but unless we do have to defend our jurisdiction, not
20 just in point of view of this Committee, but in terms of
21 legislation that is produced, you cannot put together wise
22 public policy if it falls in cracks of committee jurisdiction,
23 if the jurisdiction question is not resolved, what you end up
24 doing is subjecting the public, which is involved in it, to
25 the possibility of conflicting requirements, conflicting

5 1 policy, conflicting bureaucratic jurisdiction, and I think that
2 2 is clearly unacceptable, so whether we like it or not, I think
3 3 we have got to press it, and try to resolve it in this kind
4 4 of meeting, so I would expect that Senator Randolph would have
5 5 no objection.

6 Mr. Meyer. No, he is agreeable.

7 Senator Muskie. So why don't we go forward with such
8 8 a letter, and solicit such advice from the rest on form
9 9 and content.

10 What is your reaction?

11 Senator Cooper. The same. It is a pretty good
12 12 discussion of it.

13 I think that is the proper thing to do.

14 Senator Muskie. Without objection, without a formal
15 15 vote, then we will proceed in that way, and hope it works
16 16 out.

17 Now, I gather from the report that Leon gave me of
18 18 yesterday's discussion, that you went into items three and
19 19 four of the agenda?

20 Senator Cooper. Number five.

21 Senator Muskie. Number five?

22 I thought it was four, but you slipped into four, so
23 23 we are talking about three and four, and this relates speci-
24 24 fically to the proposal advanced by Senator Buckley.

25 Is that what is before us?

6 1 Senator Eagleton. That is what we discussed yesterday.

2 Senator Baker. It was not before us as a motion, but
3 that is what we spent most of our time discussing.

4 Senator Muskie. I think we might as well pick it up,
5 identify the issues and act on it.

6 Mr. Billings. Members have in front of them now a
7 comparative print, which sets forth the Committee print, and
8 the views of the Administration on that Committee print, on
9 a crossover basis.

10 That was not before us yesterday. The particular issue
11 involved is on page 22.

12 Mr. Jorling. The numbering is up in the righthand
13 corner.

14 Mr. Billings. Page 22.

15 This is the comments that EPA submitted at the staff
16 level on the Committee print.

17 Senator Baker. But they are informal comments at the
18 staff level from EPA?

19 Mr. Billings. To my knowledge, they have not been
20 cleared through the Bureau of the Budget.

21 Senator Baker. I am quite sure they have not been
22 cleared.

23 I am also quite sure the Administration wants to main-
24 tain an element of flexibility, short of making a statement of
25 the particular Administration's position, so I really rather

7 1 think we ought to characterize the righthand column as the
2 informal staff level comments, by Administration representa-
3 tives.

4 Senator Baker. I think as a matter of fact, and
5 I make no secret to the fact I recommended to them, that we
6 are continuing the staff dialogue in an effort to reconcile
7 at the staff level as much of the conflict as possible, before
8 they make a formal presentation of an Administrative position,
9 Administration position.

10 If the Committee prefers, I think we could probably
11 precipitate a set of specific recommendations, but, frankly,
12 I have been so encouraged with the staff conferences so far,
13 I felt we were making better headway that way than we would
14 otherwise.

15 Senator Muskie. I raise the question from a
16 procedural point of view.

17 What I would prefer is procedures to take up each item
18 which is subject to discussion, which creates an issue, and
19 discuss it and dispose of it finally, so that when we have
20 taken up each item and we finish the last one, up to that
21 point, we are then presented with an Administration position
22 on items we have already discussed, debated and voted on.

23 It would have the effect of further delays, so I am
24 curious as to how we should handle this business procedure, and
25 still accommodate the Administration is what I want to do.

8 1 Senator Baker. To be done either way honestly, it is
2 my view the Administration is trying to accommodate the
3 Committee, by avoiding a direct conflict on items that
4 might otherwise be reconciled at the staff level.

5 6 The time may have come close enough that we need to
7 have a firmer statement of the Administration's position.

8 9 Senator Muskie. What the Administration is hoping for
10 with the input of informal staff suggestions, and consideration
11 of each item the Committee may resolve, in the way the
12 Administration can accept and avoid a formal Administration
13 position.

14 15 Senator Baker. Yes. I have the right to recommend
16 to the Administration, but I volunteered to hope that the
17 cooperation between minority and majority of this Committee
18 has produced so far always a unanimous report. It might be
19 a model for cooperation between the Committee and the Adminis-
20 tration, so that informal negotiations might be preferable to
21 a hardened Administration position.

22 23 Senator Muskie. Let me ask this one further.

24 25 I would have no objection to moving forward in that
26 way. I have the suggestion, as our work unfolds, we are
27 producing a policy in which the Administration can accept, that
28 we ought to be alerted to that rather early, so that we do not
29 go through a whole process of covering each and every item, only
30 to find, we have to back up and reconsider every item, because

1 the Administration has a position they would like us to
2 consider, so why don't we play it by ear and see how it goes,
3 and what progress we make.

4 Senator Baker. I agree with your remarks. I think as
5 I understand it, you say this is fine for the time being, but
6 let's not let it turn into a longterm encounter.

7 Let's try it for a few more days, and if there are
8 major differences, let's find out, and in the future, we may
9 need future Administration comments.

10 Mr. Billings. On the agenda, it was drawn primarily
11 on those issues in which there was a fairly clear difference
12 at the staff level.

13 For example, the staff, neither EPA, nor of the
14 Committee felt there was any way we could negotiate the
15 issue of grants.

16 As you go down these, you will note there are fairly
17 precise differences between the Administration and the
18 Committee.

19 The second point, and the things that are not on the
20 agenda, does not mean they should be ignored by the Committee,
21 but which they are continuing to negotiate, and we are very,
22 very close on the agreement.

23 The other point is the Administration has formally
24 commented on the Refuse Act Section, Title IV, in a letter
25 dated September 1, from Chairman Train, and that is also cross-

1 printed in this legislation.

2 Senator Baker. I think, Mr. Chairman, that I have said
3 enough on this point.

4 I still make only the point that even on the agenda
5 items, it is more likely, and certainly easier to try to get
6 an accommodation without an Administration position being
7 published, than it is after one is published.

8 May I suggest, Mr. Chairman, in view of this conversa-
9 tion, a new cover print be attached to each copy of this, so
10 that the newspapers, or others who inevitably get copies of
11 this, do not misunderstand, and it read informal Administration
12 Staff Comments?

13 Senator Muskie. I think that is a wise comment. I have
14 no objection to that.

15 Senator Baker. Informal agency comments.

16 Senator Muskie. All right. Informal Agency Comments.
17 Of course, you have the Administration comments on every
18 page.

19 Mr. Billings. We could have it reproduced.

20 Mr. Jorling. There are only twenty-five copies of
21 this document, and they are all in this room.

22 Senator Muskie. That takes us then to Senator Buckley's
23 proposal, which has not been presented to us, and I think it
24 might be well for Senator Buckley to present it, and then see
25 if we can identify the issues involved in it and resolve it.

11 1 We might perhaps get that much done today.

2 Senator Buckley. Mr. Chairman, during the recess, I
3 think we all took it upon ourselves to examine the print that
4 was approved by the Subcommittee, and to discuss it with
5 state authorities, to find out what might be the practicalities
6 of this.

7 Anyway, part of this is the self-education process.
8 I found at least insofar as New York State is concerned, and
9 I understand there is testimony supporting this point of view
10 from representatives of other states, the problem has not been
11 so much the inadequacy of Federal contribution, as failure of
12 the Federal Government to come up with the promised money.

13 That was the hang-up.

14 Secondly, the feeling that was expressed, that the
15 states who had failed, or at least many of the states who
16 had failed to react to the incentives, the inducements that
17 are existing might well very well refuse to react to further
18 inducements that are incorporated in what we are discussing,
19 so that you would still find that there would be that gap, with
20 the state-local effort, placing the larger burden on the
21 municipalities.

22 Finally, we have the phenomenon, in this particular
23 legislation, we have that which is unlike any other legisla-
24 tion, we are not offering inducements to the states and
25 localities to follow a program adopted by the Federal Govern-

12 1 ment, but rather we are telling them in the last analysis, you
2 will buy such and such a date come up with a plan which will
3 meet nationally imposed water quality standards.

4 Given all of these facets, plus the argument that to
5 the extent we increase the Federal ante to that extent, we are
6 inducing municipalities to drag their heels, hoping that two
7 years hence we go from seventy-five to eighty, or ninety.

8 To that extent, the present approach could be counter
9 productive.

10 An alternative which appeared to me, and I had dis-
11 cussions with Senator Baker about this, informally at one
12 time or another, was that as the United States Government
13 pursuant to this proposed legislation will be demanding total
14 national compliance, and also, as the present proposal requires
15 a system of user charges, which will incorporate among other
16 things, the salting away of replacement funds, that we could
17 take another approach which would offer 100 percent Federal
18 financing, and in effect, using the same system of compulsory
19 user charges, to repay the Federal loan.

20 I am trying to get figures together now, and I do not
21 think we can come up with final conclusions until those figures
22 are in hand, but the indications are that the Federal Government
23 could come in and provide a hundred percent financing for
24 improved installations, and have the Federal Government in
25 effect purchase bonds, debentures rather of these municipalities,

13 1 which would be redeemed by user charges, which would pay the
2 interest, the amortization of principal, and operating and
3 management costs.

4 If to the extent that there is a discrepancy between
5 the user charges and this system, and that this system is
6 opposed, and the user charges contemplated in the current
7 print, to that extent, there are many ways we could make
8 judgment, such as recovering less than a hundred percent of
9 the advances, or subsidize the interest charges.

10 We could also build into that flexibility, which is
11 undoubtedly required to help those regions which are just too
12 poor, too sparsely settled to be able to finance out of the
13 user charges the kind of waste treatment plants that would be
14 required, and, of course, the EFA was a device approaching that
15 direction.

16 The approach I suggest would make the EFA unnecessary.
17 Also, as we went into this program, the agency which would be
18 doing the financing could go to the public, and refinance
19 additional work, so we would have in effect a revolving fund.

20 We have some precedent for this sort of situation,
21 which will give us facts and figures, and experience to go by.

22 Senator Baker. The Farmers Home Administration, the
23 HAPA, and to some extent the REA electric programs.

24 Senator Buckley. I think this would be a frank
25 admission that we, the Federal Government, are requiring total

14 1 compliance, and, therefore have the obligation, one way or
2 another, we will provide total financing.

3 Senator Muskie. Would we be requiring, you would
4 maintain the requirement of the plants within the deadlines?

5 Senator Buckley. Yes.

6 Senator Muskie. Would you require them to use this
7 method of financing?

8 Senator Buckley. Not if they chose to go an alternate
9 route.

10 Senator Muskie. What you are saying, you are underlying
11 the assumption they have the financial capacity to build these
12 plants, essentially exists at the local level, and all we need
13 to do is motivate them to use it.

14 Senator Buckley. That is presupposed in the existing
15 plan, because we are stating as a condition to receiving Federal
16 grants, there will be a system of user charges, which will pay
17 for the maintenance, operations, and also have a sinking fund
18 for replacement.

19 Senator Muskie. Not the initial construction.

20 Senator Buckley. Not the initial construction.

21 Senator Muskie. So there is a Federal subsidy.

22 Senator Buckley. The only difference in our two pro-
23 posals would be the interest obligation, if replacement--

24 Senator Muskie. How do you account for the \$20 billion
25 of Federal appropriations that we would provide, that does not
need to be reimbursed by user charges, except to the extent that

1 it may be used to provide for industrial facilities?

2 That \$20 billion is something we are not requiring
3 reimbursement for, and that \$20 billion is a legitimate figure,
4 is a burden that your proposal would impose upon the local
5 user.

6 It is not imposed on the local user by the Committee
7 print.

8 Senator Buckley. It would be an obligation reflected
9 in the user charges, a replacement charge, a replacement cost.

10 Now, currently, my understanding is that few if any
11 municipalities in their user charges have a sinking fund for
12 replacement.

13 Once the set of bonds are repaid, then they need to
14 expand, and they go to the market, borrow the money for the
15 next go around.

16 On substituting repayment of the costs for the sinking
17 fund for the future costs, you--

18 Senator Muskie. What does your proposal do about
19 future costs?

20 Senator Buckley. It relies on a system we now have in
21 effect when a municipality wants to expand its sewage disposal
22 facility, they go to the market and borrow.

23 Senator Muskie. I thought they were going to borrow
24 from your revolving fund?

25 Senator Buckley. They can borrow from the revolving

16 1 fund, for the policy is to get them going.

2 Senator Muskie. In focusing on the revolving fund,
3 how does the revolving fund accumulate the capacity to provide
4 for treatment plants?

5 If all the revolving funds does is reflect operating
6 costs, how does it accumulate?

7 Senator Buckley. Part of this proposal would involve
8 a negotiable paper going from the municipality to this
9 agency.

10 Senator Baker. The user charge does not just go into
11 the operation and maintenance. It is that service that goes
12 into the fund.

13 Senator Buckley. Senator Muskie said how would you
14 provide for future funding, if the user charges reflected only
15 the requirement of operation and maintenance.

16 My requirement is it included more than that. The user
17 charges would include charges that covered the cost of opera-
18 tion, maintenance, principal and interest, so in effect the
19 revolving fund is building in equivalent form a collective trust
20 fund for future replacement.

21 Senator Muskie. It does so by requiring the user charge
22 to repay the initial construction cost, which in our bill is
23 assumed by the Federal Government to pay \$20 billion in
24 appropriations.

25 Senator Buckley. The present bill is placing an obliga-

17 1 tion to reflect any user charges as a replacement fund, so
2 2 we are substituting repayment in the cost of the existing plan
3 3 in the cost of putting money aside for the future.

4 4 Senator Muskie. How does that constitute a relief of
5 5 the burden?

6 6 Senator Buckley. What I am proposing would be no more
7 7 burdensome than what we presently propose.

8 8 Senator Baker. I think it does relieve the burden, and,
9 9 of course, the detailed analysis of the final cost will be
10 10 the final determinant.

11 11 We are all guessing, but Senator Buckley is right, it
12 12 does not increase a greater burden on the consumer, but it
13 13 does relieve the Federal Government of general credit by
14 14 virtue of the 100 percent.

15 15 Senator Muskie. What it is saying you can induce
16 16 communities to go forward with this program, if you give them
17 17 a place to borrow the money, and this is more expensive,
18 18 because it is taxable bonds, if they borrow it.

19 19 This is the argument. A lot of them are up to their
20 20 debt limits now, the testimony shows. If you give them a
21 21 place to borrow the money, that is sufficient for them to go
22 22 forward, and it is a strong inducement in the Federal subsidy
23 23 of up to sixty percent, seventy-five percent of the costs,
24 24 it is a stronger inducement, that is your argument?

25 25 Senator Cooper. On the amount of the user charges,

18 1 it would perhaps be prohibitive.

2 Senator Buckley. First of all, we need to get the
3 figures, and we have two groups now working trying to get
4 comparative figures of what we have under the Committee
5 print, and what would happen under this alternative proposal,
6 to the extent the proposal would be more burdensome, and this
7 is deemed more desirable, to that extent, we could provide for
8 Federal outright subsidy.

9 You would not have to repay the entire cost, but a
10 portion of that cost, or there could be a subsidy of the
11 interest rates, but I would like to go a step further.

12 Senator Muskie. If that is what happens, what you
13 are coming down is essentially legislation we have already
14 considered, EFA, and Federal subsidy of the cost of
15 construction, that is what you come down to, if you come down
16 to that.

17 You have not got that much difference.

18 Senator Baker. In some instances, clearly the
19 economics of a project will bear its own burden, and others,
20 it will not, so you will have a hybrid of a hundred percent
21 debt financing, and in some cases you will have a combination
22 of a hundred percent debt and grant financing, and in other
23 cases, you may have a subsidy, but that is what I meant.

24 Senator Muskie. If you assume the debt financing to any
25 great extent, it will have to be a great extent to be a sub-

19 1 stantial modification, to carry the cost of these treatment
2 facilities, and you are assuming on a wide scale, there is a
3 capacity at the local level, but to borrow on this kind of
4 money over the next three, four, five years, without any
5 Federal subsidy, if that is the case, I do not know what we
6 are talking about with revenue sharing, and all of these
7 proposals, to help relieve, or to supplement the resources of
8 local government to meet its capital costs, as well as its
9 budgetary costs, I just do not understand it.

10 Senator Buckley. I think there is a distinction here,
11 and that is the borrower would not be the municipality, but
12 whatever the entity is that would own and operate the
13 facility.

14 Senator Muskie. The burden will fall on the same
15 people, the same tax base.

16 Senator Buckley. It will fall on the user.

17 Senator Muskie. He is the local property taxpayer,
18 he is the local payer of service fees of one kind or another,
19 and it is the same group that you are going to hit. You do
20 not expand it. You do not inject into the picture at all
21 the ability to pay future revenue sharing, or these other
22 means of using Federal resources to supplement the heavily
23 burdened local resources, so you will hit the same guy.

24 The fact he gets another bill instead of his local
25 property tax bill is not going to make it less burdensome.

1 Senator Buckley. What the Federal Government puts in
2 is a burden on all taxpayers to start with.

3 Senator Muskie. Not to the same extent. If your
4 assumption is the property tax is as equitable as the income
5 tax, yes.

6 If you recognize it is not, which most taxpayers do,
7 even those who have good incomes, then the answer is no.

8 Senator Buckley. To the extent it is covered by the
9 Federal Government, to that extent, the overall burden is
10 cheaper.

11 My premise is we can come up with something that would
12 be no more burdensome in terms of user charges, than the
13 current Committee print, and to the extent that there is a
14 hundred percent financing, the local community does not have
15 to come up with between 45 percent and ten percent, depending
16 on state action, so that that particular obligation--

17 Senator Muskie. Your answer to that is that they can
18 come up with a hundred percent.

19 Senator Buckley. No, the user will be spending the
20 same amount of money, one way or the other.

21 Senator Muskie. I think that is a very tenuous system.

22 Senator Buckley. We will have a self-financing vehicle.

23 Senator Muskie. You are assuming, when you say that, the
24 cost of replacement, or expansion is one equivalent to the
25 \$20 billion, what we think is necessary to build the treatment

1 plants for the next three, four, five years.

2 I do not think there is any evidence to bear on that
3 one way or another.

4 Secondly, you are assuming that that replacement cost
5 is going to hit them over a similar time frame, so that they
6 have to bear it under some form of taxation, whether user fees
7 or otherwise, and the current burden, or rate of doing so is the
8 same as those the \$20 billion were assumed by the Federal
9 Government, and I do not think there is any evidence to bear
10 on that one way or another, and I would doubt that if we
11 build a treatment plant or plants in the next three years, in
12 the following three years, we will have to have replacement
13 and expansion facilities to the same degree, and only if it is
14 the same amount of expansion over the same period of time, will
15 the user fees be the same or more.

16 My assuming here, my assumption is if we build \$20
17 billion worth of facilities, that the growth and replacement
18 will not be over the same period of time.

19 In other words, not within the next three years, will
20 we have to provide gross facilities, replacement facilities in
21 the same order of magnitude.

22 I do not know what period it will be. It may be over
23 a period of fifteen, twenty years, that a similar burden is
24 accumulated, but if it is, then the user charge rate will be
25 lower, to accumulate the money to provide replacement over a

22 1 three-year period.

2 Senator Buckley. We are talking about facility by
3 facility.

4 Let's say it cost \$10 million over twenty-five years,
5 whether you recover that \$10 million over the twenty-five year
6 period, or salt away over the twenty-five year period the
7 \$10 million plus inflationary factors to replace it, I think
8 you have a trade off.

9 At least, I think you have figures to indicate it
10 one way or the other.

11 Senator Muskie. I have no objection to the figures, if
12 they do not take too much time to assemble.

13 We have had great difficulty as the Committee knows in
14 getting hard figures over the costs of the next ten years, and
15 the result is that we built into the bill a two-phase program,
16 one making the initial commitment, which we all understood was
17 a ballpark guess, ordering a hard estimate for five years from
18 now.

19 Now, what we required to have in the five years available
20 now, we ought to look at it, if the Committee approach, or
21 your approach is used.

22 Senator Buckley. I think there is a difference of
23 quality in the figures, to determine what is going to be
24 required as to costs, but if you assume a model of a particular
25 plant facility, and an analysis of alternative ways of financing,

and payment of its construction, or the sinking fund for replacement, I think it is easy.

Senator Muskie. If you ignore the logical problem and focus on the smaller one, it is always easy.

Senator Buckley. The larger ones is something similar to the smaller ones.

Senator Muskie. That is a problem we must look at.

Senator Baker. I think it is appropriate at this point, we have to find more information, there ought to be a reasonable time to find it, and I recommend we go onto something else.

Senator Muskie. I think we ought to be sure we identify all of the issues that are involved in this in Senator Muskie's proposal.

Senator Cooper. Perhaps yesterday afternoon when we went over these, I asked about three questions.

Maybe you did answer them yesterday.

One, our bill, whatever they want to put in, that amount is necessary to do what you want to do in the next three, four, five years, plus what stakes the local municipality would have in it.

Now, would this proposition to do this so reduce the amount of money available, that it would limit the number of municipalities, in other words, we have a Federal contribution,

24 1 this proposition would so reduce the total amount available
2 that--

3 Senator Buckley. I do not believe this would necessarily
4 be the case, because in this entity of financing against the
5 paper, the negotiable paper required of the municipality,
6 the municipalities and the states are going to finance what they
7 are doing, either by -- Well, the borrowing will be handled
8 through this vehicle so that I do not see where this would
9 reduce the total amount invested.

10 By the same token, it would take care of those states
11 and municipalities that just drag their heels that do not
12 move forward, and I do not see putting all of the mayors in
13 jail for failing to meet these.

14 Senator Muskie. Incidentally, I would like to refer you
15 to the study that is in the Committee hearings, which is
16 ordered by the Administration, prepared by the Eastman Dillon
17 Company in New Jersey.

18 The economic impact study concluded local governments
19 would be hard pressed to finance their anticipated share of
20 the cost of waste treatment facilities, and the total costs of
21 what is required for sanitary sewers.

22 This leads to the conclusion that states as well as
23 Federal financial assistance should be made available to local
24 governments for the payment of their portion of the cost of
25 waste treatment facilities.

This is on page 707, and there is much more to it.

25 1 There is considerable testimony in her covering the
2 point.

3 It seems to me you minimize as to the need for a
4 Federal subsidy, to enable interests to go forward, and the
5 record of this Committee over a period of years supports that
6 conclusion.

7 Mr. Jordan. Could I focus a moment on that element of
8 the Committee print as it now exists, with respect to user
9 charge.

10 As I understand the requirement, pre-condition to any
11 grant being made, or construction of any facility, the user
12 charge system would have to provide for the following comments:

13 One, the retirement of the local share of capital
14 costs, two, the operation and maintenance of the facility.

15 The third component is the accumulation of sufficient
16 funds during the life of the facility for which the grant is
17 being made to replacement, at the end of its life.

18 Now, that suggests the Committee believes that during
19 the life of the plant, for which the grant is to be made, the
20 users of that facility would be able to pay for all of those
21 things.

22 Mr. Billings. We do not require payment of the local
23 share by the individual users, only by industrial.

24 Mr. Jordan. The most important element is the replacement
25 costs.

26 1 It seems to me we are assuming that each community has
2 within it, the users of the system, have the financial capacity
3 to pay through user charges, for the replacement of that
4 facility at the end of its life, which is bound to be more
5 expensive than the facility that is being built at the current
6 time.

7 Senator Muskie. I am saying that the accumulation of
8 the replacement costs over twenty-five years is a different
9 order of magnitude, and then they may pay off the bonds over
10 a twenty-five year period, but they have to go to the capital
11 markets and borrow that kind of money now.

12 They have got to go to their voters and ask them to
13 approve the purchase of the issuance of that kind of debt now.

14 Mr. Jordan. It seems to me, Mr. Chairman, hypotheti-
15 cally, the community were to finance present construction a
16 hundred percent, with revenue bonds to be required over a
17 twenty-five year period, with revenues generated by user charge
18 systems, that that would be cheaper in terms of the rate paid
19 than the position in the Committee print for a user charge to
20 include an accumulation over precisely the same period of time of
21 a replacement.

22 Senator Muskie. Whether or not that is so, I am not
23 so sure I accept that conclusion at the moment.

24 The point I am making, is the problem of the community,
25 that this kind of burden suddenly is imposed on it, if the

27 1 Federal Government is stepping out from under it, in effect
2 2 taking the states out from under it too, saying to the
3 3 communities, we want you to build these plants, we want you
4 4 to go out and borrow the money to do it in the next three
5 5 years, if you want the program going on at the same pace as
6 6 the Committee print envisages, we want you to go out and
7 7 borrow that money, \$20 billion worth, if we want the same
8 8 schedule, the same time schedule, with all of the political
9 9 problems and economic problems it imposes on you, you have
10 10 to go to your voters for referendum, you may have to go to
11 11 the legislature to raise your debt limits, you may have to
12 12 postpone other capital expenditures, but we are saying you
13 13 use your borrowing power, and then you use your political
14 14 power to impose the user charges, so that the local governments
15 15 have got to go to their people, and say, look, the Federal
16 16 Government is no longer going to help us. We have to borrow
17 17 this much money to do it, that will eat into our borrowing
18 18 capacity.

19 Senator Baker. Mr. Chairman, I think it is important
20 20 to understand what you are saying, and using as an example
21 21 what Jordan was saying, and what Senator Buckley has been
22 22 saying, as I understand it, you were suggesting the plan
23 23 is defective at least in this respect, that--

24 Senator Muskie. I am saying what I understand its
25 25 impact is.

1 Senator Baker. I interpret it as you think it is a
2 defect.

3 Senator Muskie. Well, if that is inaccurate, then
4 correct me. If it is accurate, then we can talk about whether
5 or not it is a defect.

6 Senator Baker. I would not presume to tell the Chairman
7 whether it is correct or incorrect.

8 I would presume to tell the Chairman what I interpret
9 of what he said, so to say again, I understand your remarks
10 to indicate that the program that you described, versus the
11 comments of Jordan and the proposal by Senator Buckley, create
12 a situation where the Federal Government is withdrawing its
13 support to local authority, because it is shifting the
14 borrowing responsibility for 100 percent of the capital costs
15 to the local government.

16 Now, two things have to be considered here.

17 As I understand the proposal by Senator Buckley, it is
18 critical and key to the proposal, that the hundred percent
19 Federal debt financing would be secured, not by general
20 obligation bonds, or by any idea of a general credit of the local
21 community, but rather by an evidence of debt secured only by
22 a first mortgage on the system, and a pledge of revenues
23 derived from the operation thereof.

24 It is a vital distinction.

25 Senator Muskie. It is a local obligation.

29

1 Senator Baker. No, it is not.

2 Senator Muskie. If it is not that, the question would
3 be determined under the applicable constitutional language as
4 defining local obligation.

5 There has to be an imposition of user charges, and I
6 assume the local government would not impose user charges
7 unless it had an obligation to pay something.

8 If it had no obligation to pay something, then what are
9 you doing, giving them a gift?

10 You are imposing an obligation to repay to this
11 agency, I would assume that that is an obligation, it is a
12 debt, and if it is a debt, it would seem to me it comes under
13 debt limitations.

14 I cannot in a single statement presume to interpret
15 the constitutional language of every state, but it would seem
16 to me that is a reasonable conclusion to draw for the purpose
17 of analyzing Senator Buckley's proposal.

18 Senator Baker. Let me give you an example of which I
19 am totally familiar.

20 Incidentally, a revenue bond, secured by pledge of the
21 revenues from the operation of a water system, sewer system, or
22 the like, is not the general obligation of the community,
23 it is rather only a debenture pledging the revenues from the
24 operation of the system, and creating a first lien in favor
25

30 of the lender on the facilities that were constructed with
1 the proceeds of the loan.
2

3 It is in no way an obligation of the local community.
4 It may not be repaid from taxation. It does not apply within
5 limitation for debt of the statute of the constitution.

6 In addition to trying to find what the relative cost
7 of the Committee proposal is versus the Buckley proposal, I
8 think it is important we understand the distinction between
9 the two, that is a general obligation to the community versus
10 debenture obligation, and that you also find out which states
11 follow the Tennessee pattern, and which if any follow some
12 other pattern that would make these obligations charged against
13 the debt limit, or constituted general obligation on the tax
14 base.

15 If there are states that require that, and I do not
16 know of any such states, if there are, it is a different
17 situation.

18 Senator Muskie. In RFA, the question raised is a
19 relevant question, and we have not found it possible to
20 accumulate the information necessary to make general judgments
21 on what the situation is.

22 Senator Baker. For the bond authority?

23 Senator Muskie. We asked these questions in the
24 hearings. The very testimony I referred to a moment ago, we
25 asked them to give us details, and they told us it was not

31 1 available.

2 In Maine, unless the revenue bonds are also associated
3 with separate legal entity, divorced from the general debt
4 obligations of local government, they are considered, so we have
5 a proliferation of districts in Maine at the community level in
6 order to separate.

7 Another point I would make, even if you have those
8 separate districts, the ultimate responsibility rests on the
9 local property owner, even though it is not through mechanisms
10 of the local government, to the district that is imposed, and
11 it is the same problem as the debt of the local government
12 itself.

13 It is that property that ultimately bears the obligation,
14 and if they are defaulted, the local real estate is subject to
15 that obligation, no matter how you separate it rests there.

16 Senator Cooper. It does not in our State.

17 Senator Muskie. I am not presuming to say it does.
18 I am saying that is the effect in my state, so you would have
19 to make an exhaustive study of the fifty different situations
20 to come up with any picture you can generalize.

21 There is going to be a great variety of situations,
22 and you have to know that.

23 Senator Buckley. Mr. Chairman, I understand the provisions
24 for a sinking fund would require more than fifty different
25 assessments. Every municipality has its own regulations.

32 1 Whichever direction we go, we will have that complica-
2 tion.

3 Senator Muskie. The Federal Government puts in \$20
4 billion, that is not an obligation of any kind that applies
5 to the debt limits, nor does it impose an obligation immediately
6 to raise taxes.

7 Now, there is a difference here. That \$20 billion
8 is a big difference in terms of the immediate burden that you
9 are asking localities to assume.

10 Senator Buckley. Mr. Chairman, my proposal actually would
11 probably have the Federal Government putting in more money into
12 the system immediately than under the Committee print.

13 Senator Muskie. I would be interested to have that.

14 Senator Buckley. We are putting in a hundred percent
15 instead of seventy-five percent.

16 I am saying, number two, that the payment--

17 Senator Muskie. If we approve your plan, what appropria-
18 tions would the Administration require of the Congress next
19 year to implement it?

20 Senator Buckley. That is what we are trying to find
21 out. It is probably larger, but they are going to get it
22 back.

23 Mr. Jordan. They are going to get it back.

24 Senator Muskie. How much of a fund do you plan to
25 establish for appropriations?

1 You are creating a borrowing capacity to establish a
2 fund.

3 Senator Baker. The local units of government will
4 borrow from the fund.

5 The fund will be constituted from appropriated funds.

6 Senator Muskie. This is an aspect of the proposition
7 that I have not heard.

8 How much of appropriations are you proposing?

9 Senator Baker. A hundred percent of projected costs.

10 Senator Muskie. \$20 million?

11 Senator Baker. Over a period of time, my estimate--

12 Senator Muskie. That is a new facet. I have not
13 heard it.

14 I got the analysis of our project from Leon this
15 morning. This is the first time it has been mentioned.

16 Senator Baker. It explains why we have some difference.

17 Mr. Billings. I had assumed the authority would sell
18 its own obligation.

19 Senator Baker. No. Yesterday we talked about the
20 first year's appropriations would be for the amount stated
21 in here, or whether they would have to be for 12 instead of
22 9 billion, and how many years that would be strung over, and
23 how fast that would go into the pipeline, and, therefore, that
24 would have a bearing on the budgetary impact and the first
25 year's operation.

34 1 Senator Muskie. Let me ask now, how the Federal input
2 will be greater under this proposal, if it is the same?

3 How is it going to be greater if it is the same?

4 You just told me it will be \$20 billion, the same
5 as the Committee print, how then will it be the same, or
6 greater?

7 Senator Baker. The Federal share will be a hundred
8 percent of the estimated cost, which presumably will be
9 \$20 billion over a period of time.

10 The question of whether or not it is Federal, state
11 and local, as presently constituted, the question I was talking
12 about was whether the budgetary impact in the first two or
13 three years will be greater or less than that, I am not
14 sure.

15 Senator Muskie. Well, before we leave that, first of
16 all, you know, I am concerned about the time factor.

17 We pose all of these pieces of information necessary
18 to make the comparisons, and to get an analysis of the
19 debt divisions, the problem of the state constitutions, the
20 problem of local ordinances to the extent to which they bear
21 upon it, and so on.

22 That will be a time consuming process to get all of
23 that information, to get those interpretations, the analysis
24 that permits us to make generalizations to understand the
25 impact.

35

1 Secondly, it would be to accumulate the economic
2 data, it is necessary to have it to make the comparisons, and
3 I can just envision sitting around here the rest of this
4 fall, waiting for that kind of information.

5 I would be happy to make an effort, but I get an
6 idea it will be a time consuming thing, and, secondly, it
7 seems to me that we ought to at some point decide whether or
8 not we go ahead, or what we do about the issues as they are
9 provided in this Committee print.

10 Also, we must decide whether there ought to be a
11 Federal subsidy or not, and whatever the Federal input may
12 be, if you are comparing the two in terms of input, there is
13 the fundamental part, whether it will be born by the Federal
14 income tax, or whether all of it will be born by the local
15 taxpayer in whatever form you sweeten it up, so it looks as
16 though it is not the property tax payer, that is a fundamental
17 issue in which you do not need these comparisons to make.

18 That is a fundamental question, and if it is answered,
19 you know, one way, then my view of revenue sharing may change,
20 so then if the capacity of local government is this great, I
21 do not know why you need to supplement it by the resources of
22 the Federal income tax payer, but that issue, I would think,
23 we could settle that.

24 Senator Baker. The other speech on that would be whether
25 we want a fifty-five percent, or a hundred percent assistance to

36 1 the local communities.

2 Senator Muskie. Your point of view, for the purpose
3 of making argument, you may equate a hundred percent Federal
4 loan, with a 55 percent Federal grant.

5 I think it is all the difference between night and
6 day between those two.

7 I do not think, in my personal experience, it is the
8 same thing at all, the ability to borrow a hundred percent,
9 it is not the equivalent to 55 percent as a gift?

10 All you are saying is that we will provide the loans
11 for you, but the total obligation is yours. That is not a
12 Federal input.

13 Senator Baker. Fifty-five percent as a gift is not
14 worth much.

15 If you do not have the bonding authority and the
16 credit---

17 Senator Muskie. You can provide that. That is what
18 the EFA was, I suppose.

19 Senator Cooper. On this question, before you leave it,
20 maybe we discussed it yesterday afternoon, but on page twenty-
21 six, it provides that the Administration is determined to adopt
22 a system of charges, and so forth, which would pay the cost of
23 operation, maintenance, and replacement.

24 Is it that the present user shall not pay only, I
25 suppose when you are using the replacement issue, in terms

37 1 of the construction, and if a municipality sold bonds, of
2 course it could be amortized to pay the construction costs
3 and the operations and maintenance.

4 I assume here, you say replacement, you mean replacement
5 would be identical with the cost of the facility, so you would
6 be providing the funds necessary.

7 Senator Jordan. Senator Cooper, I do not quite gather
8 this replacement business, because the average sewer system does
9 not wear out.

10 You have to expand them as you take in more territory.
11 A disposal plant needs updating, enlargement is going on all
12 the time, as the population increases.

13 I do not quite understand that in this bill, you figure
14 on replacement costs, I do not think you can.

15 At the time of the expansion, I know this is true in
16 North Carolina, they will sell revenue bonds for sewer and
17 water, and in there there will be so much tax to the user, to
18 retire those revenue bonds.

19 Now, whether it is or is not a city obligation, the
20 city does do the handling of it when they sell the bonds
21 under certain laws, but the revenues derived from these
22 revenue bonds pays it off. The city collects it along with
23 the other taxes, and it worked very well. Ever since it
24 started, we received some grants on everyone of these sewer
25 treatment plants which has been tremendously helpful, and it

38 1 enabled a lot of them to put in what they have got.

2 Mr. Billings. Replacement and first costs are two
3 considerable things.

4 First cost does include land, concrete, the life of
5 these projects is probably very much like a dam. There may
6 be a life for bonding purposes, which is completely different
7 than the life of the physical plant itself.

8 First costs also includes interest. Replacement would
9 include those aspects of the facility, the equipment, which
10 would offer some period of time for deterioration.

11 There are certain moving parts.

12 Now, to that extent, part of that would be maintenance.
13 It would be a thing to deteriorate on an annual basis. There
14 are things in these facilities that may last twenty or twenty-
15 five years, which are major expenses, pumping stations, and so
16 on, which would have to be replaced at some time or other, but
17 the considerable difference, there is between the first cost
18 and capital construction of the facility, and replacement
19 costs.

20 Senator Cooper. My question is, would this be imposed
21 on X number of citizens, age 18 to 80, not only the costs of
22 the first cost of the plant, but you are imposing a user charge
23 on them for replacement?

24 I can understand operation and maintenance could
25 embrace and include ordinary wear and tear.

39 1 Senator Muskie. I do not think there is any way of
2 making a comparison.

3 When I talk about replacement, I do not know how you
4 are going to project what that amounts to in comparison to
5 the \$20 billion first cost we are talking about.

6 I do not see how you can do it.

7 Senator Buckley. Presumably guidelines will be drawn
8 up within 90 days of the enactment of this telling how to
9 do this.

10 Senator Muskie. The method of making the analysis
11 does not mean you get the projections within 90 days.

12 We are talking about getting it before we act on
13 this bill, and how you project replacement costs, when you
14 are not talking about abandoning that plant, and building
15 a new one, I don't know.

16 Senator Buckley. Could I be given some time to come up
17 with something?

18 Senator Muskie. How much?

19 I am willing to put the item at the end of the agenda,
20 and when we get to it, we will deal with it.

21 Senator Buckley. Fine.

22 Senator Muskie. I am not willing to accept the assumption
23 of a prolonged delay until we get this kind of information,
24 because I doubt very much you can get it.

25 Senator Buckley. I very much appreciate this opportunity.

40 1 Senator Muskie. If we are going to have a bill at the
2 end of this Congress, we do not have much time.

3 Senator Jordan. When they set up a user charge, they
4 have established, or they do establish a maintenance and a
5 user charge, as a part of the costs, and that includes putting
6 in new pumps, because they know about how quick they are going
7 to wear out, and so forth, and so on, and so that is no problem
8 at all.

9 It is all incorporated into the original user charge,
10 and I know, for instance, right now, one pretty good system,
11 which has gotten permission from the city to put their stuff
12 into the city system, they came up with such and such a charge,
13 based on a gallon amount to come into the system.

14 Senator Boggs. It is cheaper to go into the system
15 than to build their own?

16 Senator Jordan. It was cheaper to go into the system
17 than to build their own plant and operate it.

18 Senator Boggs. Are we coming back at 2:00 o'clock,
19 Mr. Chairman?

20 Senator Muskie. 3:00 o'clock in room S-126.

21 (Whereupon, the meeting was recessed at 11:30 o'clock
22 a.m. until 3:00 o'clock p.m.)
23
24
25

